

Manual of Policies and Procedures
COMMUNITY CARE LICENSING DIVISION

CRISIS NURSERIES

Division 6

Chapter 7.3



STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES

Distributed Under the Library Distribution Act

This page is intentionally left blank.

CRISIS NURSERIES

TABLE OF CONTENTS

TITLE 22, DIVISION 6

CHAPTER 7.3 CRISIS NURSERIES

Article 1. General Requirements and Definitions

	Section
General	86500
Definitions	86501

Article 2. License Required

License Required	86505
Crisis Nursery License Requirements	86505.1
Operation Without A License	86506
Exemption From Licensure	86507
Licensing of Integral Facilities	86508
Availability of A License	86509
Limitations on Capacity and Ambulatory Status	86510
Advertisements and License Number	86511
False Claims	86512

Article 3. Application Procedures

Nondiscrimination of Applicant	86517
Application for a License	86518
Criminal Record Clearance	86519
Criminal Record Exemption	86519.1
Child Abuse Central Index	86519.2
Fire Clearance	86520
Water Supply	86521
Plan of Operation	86522
Emergency Plan	86523
Waivers and Exceptions	86524
Safeguards for Personal Property and Valuables	86526
Initial Review of Application	86527
Capacity Determination	86528
Withdrawal of an Application	86529
Issuance of a License	86531
Issuance of a Provisional License	86531.1
Issuance of a Permanent License	86531.2
Submission of a New Application	86534
Conditions for Forfeiture of a Crisis Nursery License	86535
Licensing Fees	86536

CRISIS NURSERIES

TABLE OF CONTENTS (Continued)

Article 4. Administrative Actions

	Section
Denial of a License	86540
Revocation or Suspension of a License	86542
Inspection Authority of the Department	86544
Evaluation Visits	86545
Exclusions	86546

Article 5. Enforcement Provisions

Deficiencies In Compliance	86552
Follow-up Visits to Determine Compliance	86553
Penalties	86554
Administrative Review	86555
Denial or Revocation of a License for Failure to Pay Civil Penalties	86555.1
Unlicensed Facility Penalties	86558
Unlicensed Facility Administrative Appeal	86559

Article 6. Continuing Requirements

Reporting Requirements	86561
Finances	86562
Accountability	86563
Administrator Qualifications and Duties	86564
Personnel Requirements	86565
Personnel Duties	86565.2
Staff to Child Ratios	86565.5
Personnel Records	86566
Intake Procedures	86568.1
Initial Assessment Plan	86568.2
Removal and Discharge Procedures	86568.4
Children's Records	86570
Personal Rights	86572
Discipline Policies and Procedures	86572.1
Complaint Procedures	86572.2
Transportation	86574
Health Related Services	86575
Food Service	86576
Personal Services	86577
Responsibility for Providing Care and Supervision	86578
Sanitation Requirements	86578.1
Planned Activities	86579
Crisis Day Services	86580

CRISIS NURSERIES

TABLE OF CONTENTS (Continued)

Article 7. Physical Environment

	Section
Alterations to Existing Buildings or New Facilities	86586
Building and Grounds	86587
Outdoor Activity Space	86587.1
Indoor Activity Space	86587.2
Fixtures, Furniture, Equipment, and Supplies	86588

This page is intentionally left blank.

CHAPTER 7.3 CRISIS NURSERIES**Article 1. GENERAL REQUIREMENTS AND DEFINITIONS****86500 GENERAL 86500**

- (a) A Crisis Nursery, as defined in Section 86501(c), shall be governed by the provisions specified in Chapter 7.3 and licensed by the department to operate a crisis residential overnight program. Notwithstanding Section 1596.80, a crisis nursery may also provide crisis day services.
- (b) The provisions of Chapter 1, General Licensing Requirements shall not apply to Chapter 7.3, Crisis Nurseries.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1502 and 1516, Health and Safety Code.

86501 DEFINITIONS 86501

- (a) (1) "Accredited schools, colleges or universities, including correspondence courses offered by the same," means those educational institutions or programs granted public recognition as meeting established standards and requirements of an accrediting agency authorized by the U.S. Secretary of Education.
- (A) Authorized accrediting agencies include the Accrediting Commission, National Home Study, the Accrediting Bureau of Health Education Schools, the Association of Independent Colleges and Schools, the National Association of Trade and Technical Schools, and the Western Association of Schools and Colleges.
- (2) "Administrator" means the adult designated by the licensee who meets the requirements of Section 86564 to act in the licensee's behalf in the overall management of the crisis nursery.
- (A) "Administrator Designee means a lead caregiver as specified in Section 86565(p) designated by the administrator to act on his or her behalf in the overall management of the crisis nursery.
- (3) "Adult" means a person who is 18 years of age or older.
- (4) "Applicant" means any corporation specified in Health and Safety Code Section 1516(b), that has made an application for licensure of a crisis nursery.

86501 DEFINITIONS (Continued)

86501

HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1516(b) provides:

"Crisis nurseries shall be organized and operated on a nonprofit basis by private nonprofit corporations or nonprofit public benefit corporations."

HANDBOOK ENDS HERE

- (5) "Approved schools, colleges or universities, including correspondence courses offered by the same," means those approved/authorized by the U.S. Department of Education, Office of Postsecondary Education or by the California Department of Consumer Affairs, Bureau for Private Postsecondary and Vocational Education.
- (6) "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 or a legal guardian.
- (b) (1) "Basic Services" means those services required by applicable law and regulation to be provided by the licensee in order to obtain and maintain a crisis nursery license.
- (c) (1) "California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.
- (2) "Capacity" means the maximum number of children authorized to be provided care and supervision at any one time in a crisis nursery.
- (3) "Care and Supervision" means one or more of the following activities provided by a person or the crisis nursery to meet the needs of the children:
- (A) Assistance in feeding, dressing, grooming, bathing and other personal hygiene.
 - (B) Assistance with taking medication, as specified in Section 86575(b).
 - (C) Central storing and/or distribution of medications, as specified in Section 86575(b).
 - (D) Arrangement of and assistance with medical, dental, and vision care including transportation, as specified in Section 86575(a).
 - (E) Maintenance of house rules for the protection of children.

86501**DEFINITIONS (Continued)****86501**

- (F) Supervision of children's schedules and activities.
- (G) Maintenance or supervision of children's cash resources or property.
- (H) Monitoring food intake or special diets.
- (I) Providing basic services as defined in Section 86501(b).
- (4) "Caregiver" means a crisis nursery staff person who performs the duties and responsibilities as specified in Section 86565.2, Personnel Duties.
- (5) "Child" means a person who is under 6 years of age who is being provided care and supervision in a crisis nursery, except where specified otherwise in Chapter 7.3.
- (6) "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.
- (7) "Child Abuse Central Index 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 the search resulted in a match but the California Department of Social Services determined after an investigation that the allegation of child abuse or neglect was not substantiated.
- (8) "Child with Special Health Care Needs" means a child who meets the requirements of Welfare and Institutions Code Section 17710(a).

HANDBOOK BEGINS HERE

- (A) Welfare and Institutions Code Section 17710(a) provides in part:

"Child with special health care needs' means a child... 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

86501 DEFINITIONS (Continued)**86501**

- (9) "Community Care Facility" means any facility, place or building where non-medical care and supervision, as defined in Section 86501(c) are provided.
- (10) "Complaint" means any notice of an alleged violation of any applicable regulation in Chapter 7.3 or state statute including, but not limited to, the Penal Code.
- (11) "Completed Application" means:
- (A) The applicant has submitted and the Department has received all required materials, including: an approved fire clearance from the appropriate fire authority having jurisdiction, a Child Abuse Central Index clearance, and a criminal record clearance or a criminal record exemption on the individuals specified in Section 86519(c).
 - (B) The Department has completed a site visit to the crisis nursery.
- (12) "Control of Property" means the right to enter, occupy, and maintain the operation of the crisis nursery property within regulatory requirements. Evidence of control of property may include, but is not limited to the following:
- (A) A Grant Deed showing ownership; or
 - (B) A 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.
- (13) "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.
- (14) "Criminal Record Clearance" means an individual has a California clearance and an FBI clearance.
- (15) "Crisis Nursery" means a facility licensed by the Department to operate a crisis residential overnight program pursuant to Health and Safety Code Section 1516 to provide short-term care and supervision for children under six years of age, who are voluntarily placed, as defined in Section 86501(v)(1), for temporary care, by a parent or legal guardian due to a family crisis or a stressful situation. A crisis nursery may also provide crisis day services as defined in Section 86501(c)(16).

86501 DEFINITIONS (Continued)**86501**

- (16) "Crisis Day Services" means temporary, nonmedical care and supervision for children under six years of age who are voluntarily placed by a parent or legal guardian due to a family crisis or stressful situation for less than 24 hours per day. Crisis day services shall be provided during a time period defined by the crisis nursery in its plan of operation, but not to exceed a period of 14 hours per day. A child may not receive crisis day services at a crisis nursery for more than 30 calendar days, or a total of 360 hours, in a six-month period unless the department issues an exception.
- (17) "Crisis Residential Overnight Program" means short-term, 24-hour nonmedical residential care and supervision, including overnight, for children under six years of age who are voluntarily placed by a parent or legal guardian due to a family crisis or stressful situation for no more than 30 days.
- (18) Repealed by Manual Letter No. CCL-07-08, effective 12/31/07.
- (d) (1) "Deficiency" means any failure to comply with any provision of the Community Care Facilities Act (Health and Safety Code, Section 1500 et seq.) or regulations in Chapter 7.3.
- (2) "Department" means the California Department of Social Services.
- (3) "Developmental Disability" means a disability as defined in Welfare and Institutions Code Section 4512(a).

HANDBOOK BEGINS HERE

- (A) Welfare and Institutions Code Section 4512(a) provides in part:

"Developmental disability" means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial disability for such individual.... [T]his term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature."

HANDBOOK ENDS HERE

- (4) "Director" means the director of the California Department of Social Services.
- (5) "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.

86501 DEFINITIONS (Continued)**86501**

- (e) (1) "Exception" means a written authorization issued by the Department to use alternative means that meet the intent of a specific regulation(s) and which are based on the unique needs or circumstances of a specific child(ren) or staff person(s). Exceptions are granted for particular children or staff person(s) and are not transferable or applicable to other children, staff person(s), facilities or licensees.
- (2) "Exemption" means an exception to the requirements of Health and Safety Code Section 1522 and applicable regulations.

HANDBOOK BEGINS HERE

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

"After review of the record, the director may grant an exemption from disqualification for a license... or for employment, residence, or presence in a community care facility... 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)...."

HANDBOOK ENDS HERE

- (f) (1) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense, or adjudicated as a juvenile.
- (2) "Family Crisis or Stressful Situation" means a crucial time or an unstable situation that has reached a critical phase where the parent or legal guardian has made a determination that temporary out-of-home care is in the child's best interest and is necessary for the parent or legal guardian to fulfill other responsibilities to improve or maintain the parenting function.
- (g) (1) "Guardian" means a person appointed pursuant to Probate Court Section 1514 or Welfare and Institutions Code Section 360 to care for the person, or estate, or the person and estate of another.
- (h) (Reserved)
- (i) (1) "Incident Report" means a report required by the Department as specified in Section 86561, Reporting Requirements.
- (2) "Infant" means a child under two years of age.

86501 DEFINITIONS (Continued)**86501**

- (3) "Initial Assessment Plan" means a time-limited, goal-oriented written plan implemented by the licensee that identifies the specific needs of an individual child and the child's family, including those items specified in Section 86568.2, Initial Assessment Plan, and delineates those services necessary to meet those needs.

- (j) (Reserved)

- (k) (Reserved)

- (l) (1) "Lead Caregiver" means a person who meets the education, experience and training requirements specified in Section 86565(q) and (r) and is on the premises at all times when children are present and has the authority and responsibility necessary to manage and control the day-to-day operation of a crisis nursery.

- (2) "License" means written authorization to operate a crisis nursery to provide care and supervision. The license is not transferable.

- (3) "Licensee" means the corporation, having the authority and responsibility for the operation of a crisis nursery.

- (4) "Licensing Agency" means the California Department of Social Services.

- (5) "Licensing Program Analyst" (LPA) means any person who is a duly authorized officer, employee or agent of the Department.

- (m) (1) "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).

- (n) (1) "Nonambulatory Person" means a person as defined in Health and Safety Code Section 13131.
 - (A) A person who uses postural supports as specified in Section 86572(a)(17) is deemed nonambulatory.

 - (B) A person is not deemed nonambulatory solely because he/she is deaf, blind, or prefers to use a mechanical aid.

HANDBOOK BEGINS HERE

(C) Health and Safety Code Section 13131 provides in part:

"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..."

HANDBOOK ENDS HERE

(o) (Reserved)

(p) (1) "Physician" means a person licensed as a physician and surgeon by the Medical Board of California or by the Osteopathic Medical Board of California.

(2) "PRN Medication" (pro re nata) means any nonprescription or prescription medication that is to be taken as needed.

(q) (Reserved)

(r) (1) "Rehabilitation" means the efforts to reestablish good character since the date of the last conviction, including, but not limited to, education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service.

86501 DEFINITIONS (Continued)**86501**

- (2) "Relative" means spouse, domestic partner as defined in Family Code Section 297, parent, stepparent, son, daughter, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or such person denoted by the prefix "grand" or "great" or the spouse or domestic partner of any of these persons, even after the marriage has been terminated by death or dissolution.

HANDBOOK BEGINS HERE**(A) Family Code Section 297 provides:**

- "(a) Domestic partners are two adults who have chosen to share on another's lives in an intimate and committed relationship of mutual caring.
- (b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:
- (1) Both persons have a common residence.
 - (2) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.
 - (3) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.
 - (4) Both persons are at least 18 years of age.
 - (5) Either of the following:
 - (A) Both persons are members of the same sex.
 - (B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.
 - (6) Both persons are capable of consenting to the domestic partnership.

HANDBOOK CONTINUES

HANDBOOK CONTINUES

- (c) 'Have common residence' means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return."

HANDBOOK ENDS HERE

- (3) "Responsible person" means that individual or individuals, including a relative or health care surrogate decision maker, that assists the child or prospective child in placement or assumes varying degrees of responsibility for the child's well-being. A responsible person cannot act on behalf of a child unless authorized by law.
- (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 crisis nursery.
- (2) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1522(c)(4), if the individual's criminal history meets specific criteria established by Department regulation.
- (3) "Social Worker" means a person who has a graduate degree from an accredited school of social work or social welfare.
- (4) "Substantial Compliance" means the absence of any serious deficiencies.
- (5) "Substantiated Complaint" means a complaint that has been investigated by the Department, and, as a result, a violation of regulations or statute has been found.
- (t) (Reserved)
- (u) (1) "Unlicensed Community Care Facility" means a facility as defined in Health and Safety Code Section 1503.5.

HANDBOOK BEGINS HERE

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

- "(a) 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..."

HANDBOOK ENDS HERE

- (v) (1) "Voluntarily placed," means a child who meets the requirements of Health and Safety Code Section 1516(h)(3).

HANDBOOK BEGINS HERE

Health and Safety Code section 1516 provides in part:

- (c) "Voluntary placement," for purposes of this section, means a child, who is not receiving Aid to Families with Dependent Children-Foster Care, placed by a parent or legal guardian who retains physical custody of, and remains responsible for, the care of his or her children who are placed for temporary emergency care, as described in subdivision (a). Voluntary placement does not include placement of a child who has been removed from the care and custody of his or her parent or legal guardian and placed in foster care by a child welfare services agency.

HANDBOOK ENDS HERE

86501 **DEFINITIONS** (Continued)**86501**

- (2) "Volunteer" is a non-paid crisis nursery staff person who meets the training requirements as specified in Section 86565(w).
- (w) (1) "Waiver" means a nontransferable written authorization issued by the Department to use alternative means that meet the intent of a specific regulation and are based on a facility-wide need or circumstance.
- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)

NOTE: Authority Cited: Sections 1530, Health and Safety Code. Reference: Section 297, Family Code; Sections 1501, 1502, 1503, 1503.5, 1511, 1516, 1520, 1522, 1525, 1526, 1526.8, 1531, 1533, 1534, 1538 and 1538.5, Health and Safety Code; and Section 17710, Welfare and Institutions Code.

86501.5 DEFINITIONS – FORMS**86501.5**

- (a) The following forms, which are incorporated by reference, apply to the regulations in Title 22, Division 6, Chapter 7.3 (Crisis Nurseries).
- (1) LIC 165 (8/07) – Board of Directors Statement
 - (2) LIC 198 (2/01) – Child Abuse Central Index Check for County Licensed Facilities.
 - (3) LIC 198A (8/07) – Child Abuse Central Index Check for State Licensed Facilities.
 - (4) LIC 200 (8/04) – Application for a Community Care Facility or Residential Care Facility for the Elderly License.
 - (5) LIC 300A (9/03) – Removal Confirmation – Exemption Needed.
 - (6) LIC 300B (9/03) – Removal Confirmation – Denial.
 - (7) LIC 300C (9/03) – Removal Confirmation – Rescinded.
 - (8) LIC 300D (9/03) – Removal Confirmation – Non-Exemptible.
 - (9) LIC 301E (7/03) – Reference Request.
 - (10) LIC 309 (6/01) Public – Administrative Organization.
 - (11) LIC 400 (1/99) Public – Affidavit Regarding Client/Resident Cash Resources.
 - (12) LIC 401 (3/01) – Monthly Operating Statement.
 - (13) LIC 403 (11/02) – Balance Sheet.
 - (14) LIC 403A (12/02) – Balance Sheet Supplemental Schedule.
 - (15) LIC 404 (7/99) (Personal) – Financial Information Release and Verification.
 - (16) LIC 508 (1/03) – Criminal Record Statement.
 - (17) LIC 9182 (12/06) – Criminal Background Clearance Transfer Request.
 - (18) LIC 9188 (12/06) – Criminal Record Exemption Transfer Request.
 - (19) LIC 9219 (3/16) – Crisis Nursery Monthly Report.
 - (20) LIC 9219A (3/16) – Crisis Day Services Sign-In/Sign-Out Sheet.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1516, 1520, 1522 and 1522.1, Health and Safety Code.

This page is intentionally left blank.

Article 2. LICENSE REQUIRED**86505 LICENSE REQUIRED****86505**

- (a) No adult, firm, partnership, association, corporation, county, city, public agency or other governmental entity shall operate, establish, manage, conduct or maintain a crisis nursery or hold out, advertise or represent by any means to do so without first obtaining a current valid license from the Department.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1508, 1509, 1513, 1516, and 1531, Health and Safety Code; and Section 11400, Welfare and Institutions Code.

86505.1 CRISIS NURSERY LICENSE REQUIREMENTS**86505.1**

- (a) A crisis nursery shall be organized and operated on a nonprofit basis by a private nonprofit corporation or nonprofit public benefit corporation.
- (b) A crisis nursery license shall be issued only if a facility provides temporary emergency shelter and services to children under the age of six years who are voluntarily placed, as defined in Section 86501(v) by a parent or guardian.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1508, 1509, 1516 and 1531, Health and Safety Code.

86506 OPERATION WITHOUT A LICENSE**86506**

- (a) An unlicensed facility as defined in Section 86501(u), is in violation of Health and Safety Code Section 1503.5 or 1508, unless exempted from licensure pursuant to Section 86507.
- (b) If the facility is alleged to be in violation of Health and Safety Code Section 1503.5 or 1508, the Department shall conduct a site visit or evaluation of the facility pursuant to Health and Safety Code Section 1538.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1538(c) provides in part:

"Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a community care facility..., 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...within 10 days after receiving the complaint, except where a visit would adversely affect the licensing investigation or the investigation of other agencies...."

HANDBOOK ENDS HERE

- (c) If the facility is operating without a license, the Department shall issue a notice of operation in violation of law and shall refer the case for criminal prosecution or civil proceedings or both.
- (d) The Department shall have the authority to issue an immediate civil penalty pursuant to Section 86558, Unlicensed Facility Penalties, and Health and Safety Code Section 1547.

86506 OPERATION WITHOUT A LICENSE (Continued)**86506**

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1547 provides in part:
- "(a) 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 the violation.
- (b) The civil penalty... shall be imposed if an unlicensed facility is operated and the operator refuses to seek licensure or the operator seeks licensure and the licensure application is denied and the operator continues to operate the unlicensed facility..."

HANDBOOK ENDS HERE

- (e) Section 86506(c) and (d) shall be applied pursuant to Health and Safety Code Section 1549.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1549 provides:
- "The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive and may be sought and employed in any combination deemed advisable by the department to enforce this chapter."

HANDBOOK ENDS HERE

- (f) The Department shall notify the appropriate protective service agency if either of the following conditions exist:
- (1) There is an immediate threat to childrens' health and safety.
- (2) The unlicensed operator 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: Section 1530, Health and Safety Code. Reference: Sections 1503, 1503.5, 1505, 1508, 1516, 1524, 1533, 1536.1, 1538, 1540, 1540.1, 1541, 1547, and 1549, Health and Safety Code.

86507 EXEMPTION FROM LICENSURE**86507**

- (a) The provisions of Chapter 7.3 shall not apply to facilities and arrangements specified in Health and Safety Code Section 1505.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1505 provides in part:

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

- (a) Any health facility, as defined by Section 1250 [sic 1200].
- (b) Any clinic, as defined by Section 1202.
-
- (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.
-
- (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.

HANDBOOK CONTINUES

HANDBOOK CONTINUES

- (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 non-relative 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.
-
- (o) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:
 - (1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.
 - (2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.
 -
- (q) Any similar facility determined by the director...."

HANDBOOK ENDS HERE

- (b) The provisions of Chapter 7.3 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.

86507 EXEMPTION FROM LICENSURE (Continued)**86507**

(A) Such families shall not be required to obtain a license, but shall comply with all other applicable requirements set forth in this division. The home's compliance with requirements shall be monitored through and assured by the Foster Family Agency. An exclusive-use facility shall mean a nonlicensed residential facility that has been certified by a licensed Foster Family Agency as conforming to the regulations pertaining to the Small Family Home Category. A home that is exclusively used by a licensed Foster Family Agency shall only accept children placed by the agency that certified the home.

(3) A home that meets all of the following criteria:

(A) Approved by a licensed adoption agency or the Department for the adoptive placement of a child; and

(B) The child is legally free for adoption; and

(C) The agency or the Department is providing supervision of the placement pending finalization of the adoption.

(4) A home that meets all of the following criteria:

(A) Placement for adoption by a birth parent; and

(B) A petition for adoption has been filed by the prospective adoptive parents, and is pending; and

(C) A final decision on the petition has not been rendered by the court.

(5) Any care and supervision of children by a guardian or relative, including individuals specified in Health and Safety Code Section 1505(k).

NOTE: Authority Cited: Section 1530, Health and Safety Code; and Section 17730, Welfare and Institutions Code. Reference: Sections 1503, 1505, 1506, 1508, 1516, 1524, 1530.5, 1531, 1536,1, 1540, 1540.1, 1541, and 1547, Health and Safety Code.

86508 LICENSING OF INTEGRAL FACILITIES**86508**

- (a) Upon written application from the licensee, the Department shall have the authority to issue a single license for separate buildings which might otherwise require separate licenses provided that all of the following requirements are met:
 - (1) Separate buildings or portions of the crisis nursery are integral components of a single program.
 - (2) All components of the program are managed by the same licensee.
 - (3) All components of the program are conducted at a single site with a common address.
- (b) If Section 86508(a) does not apply, each separately licensed component of a single program shall be capable of independently meeting the provisions of applicable regulations as determined by the Department.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1508, 1509, 1513, and 1516, Health and Safety Code.

86509 AVAILABILITY OF A LICENSE**86509**

- (a) The license shall be posted in a prominent, publicly accessible location in the crisis nursery.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1503, 1516, and 1531, Health and Safety Code.

86510 LIMITATIONS ON CAPACITY AND AMBULATORY STATUS**86510**

- (a) A licensee shall not permit a crisis nursery to operate beyond the conditions and limitations specified on the license, including the capacity limitation.
- (b) Facilities or rooms approved for ambulatory only shall not be used by children who are nonambulatory.
 - (1) Children whose condition becomes nonambulatory shall not use rooms or areas restricted to children who are ambulatory.
 - (2) The Department shall have the authority to require children who use ambulatory sections of the crisis nursery to demonstrate that they are ambulatory.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, and 1531, Health and Safety Code.

86511 ADVERTISEMENTS AND LICENSE NUMBER**86511**

- (a) Licensees shall ensure that each crisis nursery license number is revealed in all advertisements in accordance with Health and Safety Code Section 1514.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code, Section 1514 provides:

"(a) Each residential care facility licensed under this chapter shall reveal its license number in all advertisements, publications, or announcements made with the intent to attract clients or residents.

"(b) Advertisements, publications, or announcements subject to the requirements of subdivision (a) shall include, but are not limited to, those contained in the following:

- (1) Newspaper or magazine.
- (2) Consumer report.
- (3) Announcement of intent to commence business.
- (4) Telephone directory yellow pages.
- (5) Professional or service directory.
- (6) Radio or television commercial."

HANDBOOK ENDS HERE

- (b) Correspondence shall be considered a form of advertisement if the intent is to attract clients.
- (c) Licensees who operate more than one crisis nursery and use a common advertisement for these crisis nurseries shall be required to list each crisis nursery license number in accordance with Health and Safety Code Section 1514.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1514 and 1516, Health and Safety Code.

86512**FALSE CLAIMS****86512**

- (a) The licensee shall ensure that no officer or employee of the licensee makes or disseminates any false or misleading statement regarding the crisis nursery or any of the services provided by the crisis nursery.
 - (1) If a person is determined to have made, disseminated, participated in making, or caused to be made a false or misleading statement and that statement has resulted in a crisis nursery overpayment being assessed pursuant to the Manual of Policies and Procedures Section 11-402.6 et seq., then such person shall not be eligible to be a licensee, an officer, or an employee of, a new or subsequent licensee under Title 22, Division 6 or Division 12 until the crisis nursery overpayment is fully repaid or otherwise discharged.
- (b) The licensee shall ensure that no officer or employee of a licensee alters a license or disseminates an altered license.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1508, 1516, and 1531, Health and Safety Code.

Article 3. APPLICATION PROCEDURES**86517 NONDISCRIMINATION OF APPLICANT****86517**

Any adult shall be permitted to apply on the applicant's behalf for a license regardless of age, sex, race, religion, color, political affiliation, national origin, disability, marital status, actual or perceived sexual orientation, gender identity, HIV status, or ancestry.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Section 51, Civil Code; Sections 1516, 1520, and 1530, Health and Safety Code; Section 16013, Welfare and Institutions Code.

86518 APPLICATION FOR A LICENSE**86518**

- (a) Prior to filing an application, the applicant shall attend a crisis nursery orientation provided by the Department.
 - (1) The orientation shall cover, but not be limited to, the following areas:
 - (A) Completion of the application for license.
 - (B) Scope of operation subject to regulation by the Department.
 - (2) An applicant who is already licensed for a crisis nursery shall not be required to attend an orientation if the last orientation attended was for a crisis nursery and was within two (2) years of the next scheduled orientation.
 - (3) An applicant applying for more than one crisis nursery license shall be required to attend only one orientation.
- (b) An applicant desiring to obtain a license shall file with the Department a verified application on form LIC 200.
- (c) Additional documents supporting the application shall contain the following:
 - (1) A copy of the articles of incorporation, constitution and bylaws.
 - (2) The name, title and principal business address of each officer, executive director and member of the governing board.
 - (3) A signed form, LIC 165 from each member of the board of directors.

86518 APPLICATION FOR A LICENSE (Continued)**86518**

- (4) Each member of the board of directors, executive director, and any officer shall list the name of facilities that they have been licensed to operate, employed by or a member of the board of the directors, executive director or an officer.
- (5) Information required by Health and Safety Code Section 1520(e).

HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1520(e) provides:

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

HANDBOOK ENDS HERE

- (6) Procedures for responding to incidents and complaints, as follows:
 - (A) The crisis nursery shall provide a procedure approved by the Department for immediate response to incidents and complaints. This procedure shall include a method of assuring that the person designated by the proposed licensee is notified of the incident, has personally investigated the matter, and notifies the person making the complaint or reporting the incident of action taken or a reason why no action needs to be taken.
 - (B) In order to assure the opportunity for complaints to be made directly to the person designated by the proposed licensee, and available to meet residents and learn of problems in the neighborhood, the crisis nursery shall establish a fixed time on a weekly basis when the person designated by the proposed licensee will be present.
- (7) 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 crisis nursery is located.
- (8) A plan of operation as specified in Section 86522(b).
 - (A) The description of the children served shall include categories including, but not limited to, children with developmental disabilities, mental disorders, or physical handicaps.

86518 APPLICATION FOR A LICENSE (Continued)**86518**

- (9) A financial plan of operation on forms LIC 401, LIC 403, LIC 403A, and LIC 404 or a financial statement that contains the same information as on these forms.
- (A) Start-up funds shall be available and shall include funds for the first three months of operation.
1. The Department shall have the authority to require written verification of the availability of the funds.
- (B) Start-up funds shall be independent of prospective fees. In cases of a change of ownership, expected income from current placements shall be considered.
- (C) Start-up funds shall not include funds designated for or used for construction costs.
- (10) A written plan for training of staff and volunteers, as specified in Section 86565.
- (11) A written plan for activities as specified in Section 86579, Planned Activities.
- (12) The name and residence and mailing addresses of the crisis nursery administrator, a description of the administrator's background and qualifications, and documentation verifying required education and experience requirements.
- (13) Fingerprint images as specified in Section 86519, Criminal Record Clearance.
- (14) Information required by Health and Safety Code Section 1522.1.

HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1522.1 provides:

"Prior to granting a license to, or otherwise approving, any individual to care for children, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code. The department shall investigate any reports received from the Child Abuse Registry. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency which investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry unless child abuse is substantiated."

HANDBOOK ENDS HERE

86518 APPLICATION FOR A LICENSE (Continued)**86518**

- (15) The fee for processing the application, as specified in Section 86536(a).
- (16) Other information required pursuant to Health and Safety Code Section 1520(g).

HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1520(g) provides:

"Any other information that may be required by the department for the proper administration and enforcement of [the Community Care Facilities Act]."

HANDBOOK ENDS HERE

- (d) The applicant shall cooperate in providing verification or documentation requested by the Department.
- (e) The application shall be signed by the chief executive officer or authorized representative.
- (f) The application shall be filed with the Department's Children's Residential Program licensing office that serves the geographical area where the crisis nursery is located.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, 1520, 1522, 1522.1, 1523.1, and 1524.5, Health and Safety Code.

86519 CRIMINAL RECORD CLEARANCE**86519**

- (a) The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code Section 1522(a) and (b)(1) and shall have the authority to approve or deny a crisis nursery license, or employment, residence, or presence in the crisis nursery, based upon the results of such review.
 - (1) Volunteers in a crisis nursery shall be fingerprinted for the purpose of conducting a criminal record review as specified in Health and Safety Code Section 1526.8(b)(1).

86519 CRIMINAL RECORD CLEARANCE (Continued)

86519

HANDBOOK BEGINS HERE

(A) Health and Safety Code Section 1526.8(b)(1) provides:

"Volunteers shall be fingerprinted for the purpose of conducting a criminal record review as specified in subdivision (b) of Section 1522."

(2) Health and Safety Code Section 1522(a) provides in part:

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

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

(3) Health and Safety Code Section 1522(b)(1) provides:

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

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

(B) Any person, other than a client, residing in the facility.

(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 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 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.

HANDBOOK CONTINUES

HANDBOOK CONTINUES

- (D) Any staff person, volunteer, or employee who has contact with the clients.
- (E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.
- (F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility."

HANDBOOK ENDS HERE

(b) Pursuant to Health and Safety Code Section 1522(b)(2) the following persons are exempt from the requirement to submit fingerprints:

(1) A medical professional, as defined in Section 86501(m), who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all of the following apply:

- (A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.
- (B) The individual is providing time-limited specialized clinical care or services.
- (C) The individual is providing care or services within the individual's scope of practice.
- (D) The individual is not a community care facility licensee or an employee of the crisis nursery.

(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 children.

86519

CRIMINAL RECORD CLEARANCE (Continued)

86519

- (C) When children are present in the room in which the repair person or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract for a child of the crisis nursery, and are in the crisis nursery at the request of that child's authorized representative.
 - (A) The exemption shall not apply to a person who is a licensee or an employee of the crisis nursery.
- (4) Clergy and other spiritual caregivers who are performing services in common areas of the crisis nursery, or who are advising an individual child at the request of, or with the permission of, the child's authorized representative.
 - (A) This exemption shall not apply to a person who is a licensee or an employee of the crisis nursery.
- (5) Members of fraternal, service and similar organizations who conduct group activities for children in a care, if all of the following apply:
 - (A) Members are not left alone with the children.
 - (B) Members do not take children off the crisis nursery premises.
 - (C) The same group does not conduct such activities more often than once a month.
- (6) A licensee is not prohibited from requiring a criminal record clearance of any individual exempt from the requirements to submit fingerprints, provided that the individual has contact with children in care.
- (c) Prior to the Department issuing a license, the applicant, administrator and any employee/volunteer of the crisis nursery shall obtain a California criminal record clearance or exemption as specified in Health and Safety Code Section 1522(a)(4).

86519 CRIMINAL RECORD CLEARANCE (Continued)

86519

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1522(a)(4)(E) provides in part:

"An applicant and any other person specified in subdivision (b) of the Health and Safety Code Section 1522 shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except the receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code...."

HANDBOOK ENDS HERE

- (d) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury and shall:

- (1) Declare whether he or she has been convicted of a crime, other than a minor traffic violation as specified in Section 86519(i) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code Section 1203.4 or the individual's record was sealed as a result of a court order.
- (2) If convicted of a crime other than a minor traffic violation, provide information regarding the conviction.
- (3) The licensee shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with the requirements of Section 86519(e), prior to the individual's employment, residence, or initial presence in the crisis nursery.
 - (A) Fingerprints shall be submitted to the California Department of Justice by the licensee, or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the Department.

- (e) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1522 shall, prior to working, residing or volunteering in a licensed crisis nursery:

- (1) Obtain a California clearance or a criminal record exemption as required by the Department or

86519 CRIMINAL RECORD CLEARANCE (Continued)**86519**

- (2) Request a transfer of a criminal record clearance as specified in Section 86519(f) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 86519.1(r), unless, upon request for the transfer, the Department permits the individual to be employed, reside or be present at the crisis nursery.
- (f) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:
- (1) A signed Criminal Background Clearance Transfer Request, LIC 9182.
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (3) Any other documentation required by the Department [e.g., Criminal Record Statement - LIC 508, which is incorporated by reference and job description].

HANDBOOK BEGINS HERE

- (4) Health and Safety Code Section 1522(h)(2) provides:

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

HANDBOOK ENDS HERE

- (g) Violation of Section 86519(e) shall result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation per day for a maximum of five (5) days by the Department.
 - (1) Subsequent violations within a twelve (12) month period shall result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days.

86519 CRIMINAL RECORD CLEARANCE (Continued) 86519

- (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1548.
- (h) Violation of Section 86519(e) may result in a denial of the license application or suspension or revocation of the license.
- (i) If the criminal record transcript of any of the individuals specified in Health and Safety Code Section 1522(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than \$300, and an exemption pursuant to Section 86519.1 has not been granted, the Department shall take the following actions:
 - (1) For initial applicants, denial of the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees or volunteers, exclude the affected individual pursuant to Health and Safety Code Section 1558, and deny the application or revoke the license, if the individual continues to provide services or resides at the crisis nursery.
- (j) The Department shall notify the licensee and the affected individual associated with the crisis nursery, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1522(c)(3) provides in part:

"...If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, [sexual battery] 273a, 273d [child abuse] or subdivision (a) or (b) of Section 368 [elder or dependent adult abuse] of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered...."

HANDBOOK CONTINUES

86519 CRIMINAL RECORD CLEARANCE (Continued)**86519**

HANDBOOK CONTINUES

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

"The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client...."

HANDBOOK ENDS HERE

(k) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees and volunteers in the individual's personnel file as required in Section 86566(a)(11).

(1) Documentation shall be available for inspection by the Department as specified in Section 86566(c).

(l) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.

(1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1503.5, 1505, 1508, 1522, 1526.8, 1531, 1533, 1538, 1540, 1540.1, 1547, 1548, and 1549, Health and Safety Code.

86519.1 CRIMINAL RECORD EXEMPTION**86519.1**

(a) While considering allowing or denying an exemption, the Department shall notify a licensee to act immediately to remove from the crisis nursery or bar from entering the crisis nursery any of the following persons:

(1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;

(2) Any person who has been convicted of a felony;

(3) Any person who has been convicted of an offense specified in Penal Code Sections 243.4, 273a, 273d, 273g, or 368;

86519.1 CRIMINAL RECORD EXEMPTION (Continued)**86519.1**

- (4) In addition to Health and Safety Code Section 1522(c)(3), any person who has been convicted of any of the following crimes:
- (A) Battery;
 - (B) Shooting at Inhabited Dwelling;
 - (C) Corporal Injury on Spouse/Cohabitant;
 - (D) Discharging Firearm with Gross Negligence;
 - (E) Exhibiting Weapon/Firearm;
 - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death;
 - (G) Criminal Threat to Harm or Injure Another Person;
 - (H) Cruelty to Animals;
 - (I) Willful Harm or Injury to Child; or
- (5) Any other person ordered to be removed by the Department.
- (b) In addition to removing an individual from the crisis nursery, the licensee must return the confirmation of removal form that is sent by the Department, confirming under penalty of perjury that the individual has been removed from the crisis nursery. This form must be returned to the Department within five days of the date on the form.
- (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A, Removal Confirmation - Denial, LIC 300B, Removal Confirmation - Rescinded, LIC 300C, or Removal Confirmation – Nonexemptible, LIC 300D.
- (c) After a review of the criminal record transcript, the Department may grant an exemption if:
- (1) The applicant/licensee requests an exemption in writing for himself or herself, or
 - (2) The applicant/licensee requests an exemption in writing for an individual associated with the crisis nursery, or
 - (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and

86519.1 CRIMINAL RECORD EXEMPTION (Continued)**86519.1**

- (4) The affected individual presents substantial and convincing evidence to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment, or presence, in a licensed crisis nursery.
- (d) To request a criminal record exemption, a licensee or license applicant shall submit information that indicates that the individual meets the requirements of Section 86519.1(c)(4). The Department shall notify the licensee or license applicant and the affected individual, in concurrent, separate notices, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in an exemption request.
- (2) The notice shall list the information that must be submitted to request a criminal record exemption.
- (3) The information must be submitted within forty-five (45) days of the date of the Department's notice.
- (A) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department including, but not limited to, police reports and certified court documents to process the exemption request.
- (B) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or a dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.
- (C) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may deny the exemption request.
- (D) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:
1. Chooses not to request the exemption and
 2. Chooses not to employ or terminates the individual's employment after receiving notice of the individual's criminal history, or

86519.1 CRIMINAL RECORD EXEMPTION(Continued)**86519.1**

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

86519.1 CRIMINAL RECORD EXEMPTION (Continued)**86519.1**

- (g) The Department may deny an exemption request if:
- (1) The licensee and/or the affected individual fails to provide documents requested by the Department, or
 - (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process.
- (h) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (1) Exemption denial notices shall specify the reason the exemption was denied.
- (i) The Department has the authority, pursuant to Health and Safety Code Section 1522(g), to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed crisis nursery.
- (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
- (1) Makes a knowingly false or misleading statement regarding:
 - (A) Material relevant to their application for a criminal record clearance or exemption,
 - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed crisis nursery, after the Department has ordered that they be excluded from any or all licensed facilities, or
 - (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
 - (2) Is on probation or parole.
 - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption.
- (k) The Department shall consider granting a criminal record exemption if the individual's criminal history meets all of the applicable criteria specified in Sections 86519.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 86519.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated or the reports regarding the underlying offense, presents a risk of harm or violence.

86519.1 CRIMINAL RECORD EXEMPTION (Continued)**86519.1**

- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
 - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (6) The individual has not been convicted of a violent felony.
 - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 86519.1(k)(1) through (5) above shall begin from the last date of conviction(s).
- (l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 86519.1(k)(1) through (6).
- (m) Except as specified in Health and Safety Code Section 1522(g)(1)(A)(ii), the Department shall not grant an exemption if the individual has a conviction for any offense specified in Health and Safety Code Section 1522(g)(1). The Department shall notify the licensee or license applicant and the affected individual, in concurrent, separate notices, that the affected individual has a non-exemptible criminal conviction and may not work, reside or have contact with clients of any community care facility.
- (1) The notice to the affected individual shall list the nature and date of the non-exemptible conviction(s) that the Department is aware of at the time the notice is sent.

HANDBOOK BEGINS HERE

- (2) Pursuant to Health and Safety Code Section 1522(g)(1), no exemption shall be granted if an individual has been convicted of any of the following offenses, including those in Penal Code Sections 290(a) and 667.5(c):
1. Penal Code Sections 136.1 constituting a felony violation of Section 186.22 – Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.
 - 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 – Kidnapping.
 6. Penal Code Sections 211, 212.5, 213, 214 – Any robbery. Pursuant to Glesmann v. Saenz (2006) 140 Cal.App.4th 960, 990, an exception may be considered if the subject was convicted of 2nd degree robbery and has obtained a certificate of rehabilitation.
 7. Penal Code Section 215 – Carjacking.
 8. Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation. A conviction for the attempt to commit this crime is also non-exemptible, except for attempted assault with intent to commit mayhem, as specified at Penal Code Section 290(a)(2)(A).
 9. Penal Code Section 243.4** – Sexual battery.
 - 10.** Penal Code Section 261, (a)(1), (2), (3), (4) or (6) – Rape.
 11. Penal Code Section 262(a)(1)** or (4) – Rape of spouse. Section 262(a)(1) requires use of violence or force for which the subject was sentenced to state prison, as specified at Penal Code Section 290(a)(2)(A).
 12. Penal Code Section 264.1** – Rape in concert.

HANDBOOK CONTINUES

86519.1 CRIMINAL RECORD EXEMPTION (Continued)

86519.1

HANDBOOK CONTINUES

13. Penal Code Section 266** – Enticing a minor into prostitution.
14. Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
15. Penal Code Section 266h(b) – Pimping a minor.
16. Penal Code Section 266i(b) – Pandering a minor.
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 as specified in Penal Code Section 290(a)(2)(A).
21. Penal Code Section 273a (a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
22. Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child. If conviction was prior to 1978, then it must be for child abuse and not spousal abuse.
23. Penal Code Section 285** – Incest.
24. Penal Code Section 286** – Sodomy. Pursuant to Penal Code Section 290(a)(2)(A), need not be "by force."
25. Penal Code Section 288** – Lewd or lascivious act upon a child under 14.
26. Penal Code Section 288a – Oral copulation. Pursuant to Penal Code Section 290(a)(2)(A), need not be "by force."
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.

HANDBOOK CONTINUES

86519.1 CRIMINAL RECORD EXEMPTION (Continued)

86519.1

HANDBOOK CONTINUES

- 29. Penal Code Section 289** – Genital or anal penetration by foreign object.
- 30. Penal Code Section 290(a) – All crimes specified for which one must register as a sex offender including attempts and not guilty by insanity.
- 31. Penal Code Section 311.1** - Sent or brought into state for possession, or distribution: child-related pornography.
- 32.** Penal Code Section 311.2(b), (c) or (d) – Sending or bringing into state, possessing for distribution: child-related pornography.
- 33. Penal Code Section 311.3** – Sexual exploitation of a child.
- 34. Penal Code Section 311.4** – Using a minor to assist in making or distributing child pornography.
- 35. Penal Code Section 311.10** – Advertising or distributing child pornography.
- 36. Penal Code Section 311.11** – Possessing child pornography.
- 37. Penal Code Section 314 (1) or (2) – Lewd or obscene exposure of private parts. Pursuant to Penal Code Section 290(a)(2)(A), an exception may be considered if the court expressly orders that the subject does not have to register as a sex offender.
- 38. Penal Code Section 347(a) – Felony poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, or reservoir.
- 39. Penal Code Section 368 – Elder or dependent adult abuse.
- 40. Penal Code Section 417(b) – Felony drawing, exhibiting or using a loaded firearm on grounds of a child day care center or similar program.
- 41. Penal Code Section 451(a) – Arson with great bodily injury.
- 42. Penal Code Sections 186.22 and 518 – Felony Extortion/gang related.
- 43.** Penal Code Section 647.6 [or prior to 1988 former Section 647a] – Annoy or molest a child under 18.

HANDBOOK CONTINUES
