

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



January 22, 2002

Regulation Package 1200-24

CDSS MANUAL LETTER NO. CCL-01-16

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,
CHAPTER 8.5, RESIDENTIAL CARE FACILITIES FOR THE CHRONICALLY ILL

Regulation Package #1200-24**Effective 8/26/01****Sections 87854 and 87855.1**

Senate Bill 933 (Chapter 311, Statutes of 1998) and AB 1659 (Chapter 881, Statutes of 1999) required that prior to an individual's presence or employment in a community care facility, a residential care facility for the elderly, a residential care facility for the chronically ill, or a child care facility, the individual have fingerprints submitted for purposes of a criminal background check. The statutes provide for the imposition of an immediate civil penalty of \$100 per violation on a licensee who permits a person to be present in a facility who violates this requirement. These regulations implement this legislative requirement. It is necessary for the department to place clear criteria and procedures for the implementation of these civil penalties into regulation.

Since these regulations were nonsubstantive they did not require a public hearing.

FILING INSTRUCTIONS

Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-01-15. The latest prior manual letter containing Residential Care Facilities for the Chronically Ill changes was Manual Letter No. CCL-01-11.

Page(s)

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64 through 66

Replace(s)

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Attachment

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87853	FOLLOW-UP VISITS TO DETERMINE COMPLIANCE	87853
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- (a) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.
 - (1) The follow-up visit shall be conducted within ten working days following the dates of corrections specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required.
 - (2) Except as specified in Section 87854, no penalty shall be assessed unless a follow-up visit is conducted.
- (b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the evaluator shall issue a notice of penalty (Facility Civil Penalty Assessment - LIC 421 (10/89)).
- (c) A notice of penalty shall be in writing and shall include:
 - (1) The amount of penalty assessed, and the date the payment is due.
 - (2) The name and address of the agency responsible for collection of the penalty.
- (d) When an immediate penalty has been assessed and the correction is made while the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Section 1568.07 and .072, Health and Safety Code.

87854	PENALTIES	87854
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- (a) A penalty of \$50 per day, per cited violation, shall be assessed for serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (b) An immediate penalty of \$100 per cited violation shall be assessed for failure to submit fingerprints on any individual required to be fingerprinted under Health and Safety Code Section 1568.09(b) prior to the person's employment, residence or presence in the facility.
 - (1) Progressive civil penalties specified in Sections 87854(c) and (d) below shall not apply.
- (c) When a facility is cited for a deficiency and violates the same regulation subsection within a 12-month period, the facility shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.

87854 PENALTIES (Continued)

87854

- (d) When a facility, that was cited for a deficiency subject to the immediate penalty assessment specified in Section 87854(d) above, violates the same regulation subsection within a 12-month period of the last violation, the facility shall be cited and an immediate penalty of \$1,000 per cited violation shall be assessed for one day only. Thereafter a penalty of \$100 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (1) For purposes of Sections 87854(c) and (d) above, a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number.

HANDBOOK BEGINS HERE

An example of the same regulation subsection are Sections 87218(a)(2) and 87218(a)(5). Sections 87218(a) and 87218(b) are not the same regulation subsection.

HANDBOOK ENDS HERE

- (e) If any deficiency is not corrected by the date specified in the notice of deficiency, a penalty shall be assessed for each day following that date until compliance has been demonstrated.
- (1) Immediate penalty assessments specified in Sections 87854(b), (c) and (d) above shall begin on the day the deficiency is cited.
- (2) If an immediate penalty is assessed and the deficiency is corrected on the same day, the penalty shall still be assessed for that day.
- (f) If a licensee or his/her representative reports to the Department that a deficiency has been corrected, the penalty shall cease as of the day the Department receives notification that the correction was made.
- (1) If necessary, a site visit shall be made immediately or within five working days to confirm that the deficiency has been corrected.
- (2) If it is verified that the deficiency has not been corrected, penalties shall continue to accrue.
- (3) If it is verified that the correction was made prior to the date of notification, the penalty shall cease as of that earlier date.
- (g) Unless otherwise ordered by the Department 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.
- (h) The Department shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (g) above.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.072, 1568.0822, and 1568.09, Health and Safety Code.

87855 ADMINISTRATIVE REVIEW 87855

- (a) A licensee or his/her representative shall have the right to request a review of a notice of deficiency and/or notice of penalty, within 10 working days of receipt of such notice(s).
 - (1) If the deficiency has not been corrected, penalties shall continue to accrue during the review process.
- (b) The review shall be conducted by a higher level staff person than the evaluator who issued the notice(s).
- (c) If the reviewer determines that a notice of deficiency or notice of penalty was not issued or assessed in accordance with applicable statutes and regulations of the Department, or that other circumstances existed, he/she shall have the authority to amend or dismiss the notice.
- (d) The reviewer shall have the authority to extend the date specified for correction of a deficiency, if warranted by the facts or circumstances presented to support a request for extension.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.07 and .072, Health and Safety Code.

87855.1 DENIAL OR REVOCATION OF LICENSE FOR FAILURE TO PAY CIVIL PENALTIES 87855.1

- (a) The licensee shall be responsible for paying civil penalties.
 - (1) Unless otherwise provided, the transfer, surrender, forfeiture or revocation of a license shall not affect the licensee's responsibility for paying any civil penalties 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.
 - (2) The Department shall have the authority to approve the form of payment.
 - (3) The licensee'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 1568.065.

NOTE: Authority cited: Section 1568.072, Health and Safety Code. Reference: Sections 1568.065, 1568.072, 1568.0822, and 1568.09, Health and Safety Code.

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