

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, CA 95814



January 31, 2002

Regulation Packages #1200-24

CDSS MANUAL LETTER NO. CCL-01-18

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 12,  
CHAPTER 1, CHILD CARE CENTER**Regulation Package #1200-24****Effective 7/27/01****Section 101195 and 101198.1**

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.

These regulations were considered at the Department's public hearing held on May 16, 2001.

**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-01-17. The latest prior manual letter Child Care Center changes was Manual Letter No. CCL-00-25.

<u>Page(s)</u>	<u>Replace(s)</u>
1 and 2	Pages 1 and 2
61 and 62	Pages 61 and 62
62.1	Page 62.1
65 and 65.1	Pages 65 and 65.1

Attachment

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**101193 DEFICIENCIES IN COMPLIANCE** **101193**  
(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 the corrective actions that must be taken within 30 calendar days to begin correction.
  - (D) If civil penalties are assessed, the evaluator shall require correction of the deficiency within 24 hours and shall specify on the notice of deficiency the date by which the correction must be made.
- (5) The amount of the civil penalty assessed and the date the penalty begins.
- (6) The address and telephone number of the Department's office responsible for reviewing notices of deficiencies for the area in which the child care center is located.

NOTE: Authority cited: Sections 1596.81 and 1596.99, Health and Safety Code. Reference: Sections 1596.81(b), 1596.98 and 1596.99, Health and Safety Code.

**101194 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE** **101194**

- (a) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.
- (1) A follow-up visit shall be conducted within 10 working days following the date(s) of correction specified in the notice of deficiency unless the licensee has demonstrated that the deficiency was corrected as required.
  - (2) 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.
- (c) A notice of penalty shall be in writing and shall include:
- (1) The amount of the penalty assessed and the date the payment is due.
  - (2) The name and address of the agency responsible for collecting of the penalty.
- (d) When an immediate penalty has been assessed pursuant to Sections 101195(c), (d) and (e), and correction is made when the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Sections 1596.81 and 1596.99, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.852, 1596.853, 1596.98 and 1596.99, Health and Safety Code.

**101195 PENALTIES****101195**

- (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) Notwithstanding Section 101195(a) above, 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 1596.871(b) prior to the person's employment, residence or presence in the facility.
- (1) Progressive civil penalties specified in Sections 101195(d) and (e) below shall not apply.
- (c) Notwithstanding (a) above, an immediate penalty of \$150 per day shall be assessed if a child becomes sick, is injured or dies as a result of a deficiency.
- (d) When a child care center is cited for a deficiency and violates the same regulation subsection within a 12-month period, the child care center 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.
- (e) When a child care center that was cited for a deficiency subject to the immediate penalty assessment specified in Section 101195(d) above violates the same regulation subsection within a 12-month period of the last violation, the child care center shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$150 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (1) For purposes of Sections 101195(d) and (e) above, a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number.

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An example of the same regulation subsection are Sections 101216.1(d)(1) and 101216(d)(3). Sections 101216.1(b) and 101216.1(d) are not the same regulation subsection.

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- (f) 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 assessment as specified in Sections 101195(c), (d) and (e), shall begin on the day the deficiency is cited.

<b>101195</b>	<b>PENALTIES (Continued)</b>	<b>101195</b>
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- (g) 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 either verbal or written notification that the correction was made.
  - (1) If the evaluator determines the deficiency was not corrected as reported, civil penalties shall continue to accrue from the date of the original citation.
  - (2) If it can be verified that the correction was made prior to the date of notification, the penalty shall cease as of that earlier date.
- (h) If necessary, a site visit shall be made immediately or within five working days to confirm that the deficiency has been corrected.
- (i) If an immediate civil penalty is assessed and the deficiency is corrected on the same day, the penalty shall still be assessed for that day.
- (j) 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.
- (k) The Department has 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 (j) above.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.871, 1596.98 and 1596.99, Health and Safety Code.

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**101198 UNLICENSED FACILITY PENALTIES (Continued) 101198**

- (c) If the unlicensed operator or his/her representative reports to the Department that unlicensed operation has ceased, the penalty shall cease as of the day the Department receives the notification.
  - (1) A site visit shall be made immediately or within five working days to verify that the unlicensed child care center operation has ceased.
  - (2) Notwithstanding (c) above, if the unlicensed child care center 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 Department, and shall be paid by check or money order made payable to the Department as indicated in the notice.
- (e) The Department has the authority to file a claim in any court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (d) above.

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- (f) Payment of civil penalties or application for licensure in response to a citation under this section do not permit the operation of a child care center without a license.

Health and Safety Code 1596.80 states:

No person, firm, partnership, association, or corporation shall operate, establish, manage, conduct, or maintain a child day care facility in this state without a current valid license therefor as provided in this act.

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- (g) A person assessed civil penalties may appeal the penalty under Section 101196.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.80, 1596.891 and 1596.892, Health and Safety Code.

**101198.1 DENIAL OR REVOCATION OF LICENSE FOR FAILURE TO PAY CIVIL PENALTIES 101198.1**

- (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 1596.887.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81, 1596.871, 1596.887, 1596.98, and 1596.99, Health and Safety Code.