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**Article 1. GENERAL REQUIREMENTS AND DEFINITIONS****102351.1 SPECIFIC EXEMPTION****102351.1**

The provisions of Chapter 1, General Requirements, shall not apply to family child care homes.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code.

**102352 DEFINITIONS****102352**

- (a) (1) "Adult" or "Substitute Adult" means a person who is 18 years of age or older.
- (2) "Applicant" means any person or persons making an application for a license to operate a family child care home.
- (3) "Assistant Provider" means a person at least 14 years of age who is primarily involved in caring for children during the hours that the home provides care.
- (b) (Reserved)
- (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 for whom care is authorized at any one time.
- (3) "Child" means a person, including an infant, who has not yet reached his or her eighteenth birthday.
- (4) "Child Abuse Central Index" 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.

## 102352 DEFINITIONS (Continued)

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- (5) "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.
- (6) "Completed Application" means that all required information and documentation has been provided to the Department, including the completed application form and, for a large family child care home, a fire clearance; and that a home visit has been completed.
- (7) "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.
- (8) "Criminal Record Clearance" means an individual has a California clearance and an FBI clearance.
- (d) (1) "Deficiency" means any failure to comply with any provision of the California Child Day Care Act (Health and Safety Code, Section 1596.70 et seq.) and/or regulations adopted by the Department pursuant to the Act.
- (2) "Department" means the State Department of Social Services. This term supersedes the term "Licensing agency" as used in previous regulations.
- (3) "Director" means the Director of Social Services.
- (e) (Reserved)
- (f) (1) "Family Day Care" or "Family Child Care" means regularly provided care, protection and supervision of children, in the care giver's own home, for periods of less than 24 hours per day, while the parents or authorized representatives are away. The term "Family Child Care" supersedes the term "Family Day Care" as used in previous regulations.
- (A) "Small Family Child Care Home" means a home that provides family child care for up to six children, or for up to eight children if the criteria in Section 102416.5(b) are met. These capacities include children under age 10 who live in the licensee's home.
  - (B) "Large Family Child Care Home" means a home that provides family child care for up to 12 children, or for up to 14 children if the criteria in Section 102416.5(c) are met. These capacities include children under age 10 who live in the licensee's home and the assistant provider's children under age 10.

**102352 DEFINITIONS (Continued)****102352**

- (2) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(g) (Reserved)

(h) (1) "Home" means the licensee's residence as defined by Government Code Section 244.

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Government Code Section 224 states:

In determining the place of residence the following rules shall be observed:

- (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- (b) There can only be one residence.
- (c) A residence cannot be lost until another is gained.
- (d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child.
- (e) The residence of an unmarried minor who has a parent living cannot be changed by his or her own act.
- (f) The residence can be changed only by the union of act and intent.
- (g) A married person shall have the right to retain his or her legal residence in the State of California notwithstanding the legal residence or domicile of his or her spouse.

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(i) (1) "Infant" means a child who has not yet reached his or her second birthday.

(j) (Reserved)

(k) (Reserved)

(l) (1) "License" means a written authorization by the Department or licensing agency to operate a family day care home.

## 102352 DEFINITIONS (Continued)

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- (2) "Licensee" means an adult licensed to operate a Family Day Care Home and who is primarily involved in providing care for the children during the hours that the home provides care.
- (3) "Licensing agency" See definition for 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) (Reserved)
- (o) (Reserved)
- (p) (1) "Parent" or "Authorized Representative" means any person or entity authorized by law to act on behalf of any child. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator or a public placement agency.
- (2) "Provider" means anyone providing care to children as authorized by these regulations and includes the licensee, assistant provider or substitute adult.
- (q) (Reserved)
- (r) (1) "Rehabilitation" means the effort 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.
- (2) "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.
- (s) (1) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1596.871(c)(3), if the individual's criminal history meets specific criteria established by Department regulation.

**102370 CRIMINAL RECORD CLEARANCE (Continued)****102370**

- (A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 102370(g) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.
  - (B) If convicted of a crime other than a minor traffic violation as specified in Section 102370(g), provide information regarding the conviction.
- (2) 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 comply with Section 102370(j) prior to the individual's employment, residence, or initial presence in the child care home.
- (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 California Department of Social Services.
  - (B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.
    - 1. If the Department determines that the licensee or applicant has violated Section 102370(c)(2)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed.
- (d) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1596.871 shall prior to working, residing or volunteering in a licensed facility:
- (1) Obtain a California clearance or a criminal record exemption as required by the Department or
  - (2) Request a transfer of a criminal record clearance as specified in Section 102370(j) or
  - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 102370.1(p), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (e) Violation of Section 102370(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation by the Department.

**102370 CRIMINAL RECORD CLEARANCE (Continued)****102370**

- (1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.871.
- (f) Violation of Section 102370(d) may result in a denial of the license application or suspension and/or revocation of the license.
- (g) If the criminal record transcript of any individuals specified in the Health and Safety Code Section 1596.871(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for a crime other than a minor traffic violation for which the fine was less than \$300, and an exemption pursuant to Section 102370.1(a) 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, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, and deny the application or revoke of the license, if the individual continues to provide services and/or reside at the facility.
  - (4) For individuals residing in the facility, licensee or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1596.8897, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the facility.
- (h) The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (i) If the conviction was for another crime, except a minor traffic violation, the Department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.
- (j) A licensee or applicant for a license may request a transfer of a criminal records 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 (Rev. 4/02).
  - (2) A copy of the individual's:
    - (A) Driver's license, or

**102370 CRIMINAL RECORD CLEARANCE (Continued)****102370**

- (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., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

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- (4) Section 1596.871(h)(2) of the Health and Safety Code states:

The California Department of Social Services shall hold criminal records 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 records clearances to be transferred.

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- (k) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees, volunteers that require fingerprinting and non-client adults residing in the facility.
- (1) Documentation shall be available for inspection by the Department.
- | (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.
- | (m) (Reserved)

## 102370 CRIMINAL RECORD CLEARANCE (Continued)

102370

- (n) If the Department determines that any licensee or individual specified in Health and Safety Code Section 1596.871(b) is arrested for a crime for which, if convicted, an individual is not eligible, by law, to receive an exemption, pending completion of its investigation into the facts underlying the arrest, the Department may take the following actions as it deems necessary:
- (1) If the arrested individual is a licensee, the Department may notify the licensee, by telephone or in writing, to immediately cease operation for up to 30 days.
  - (2) If the individual arrested is not a licensee, the Department may notify the licensee and the individual associated with the facility, by telephone or in writing, that the individual may not be resent in the facility for up to 30 days.
  - (3) If the individual arrested is the licensee's spouse or a dependent adult that resides in the licensee's home, the Department may notify the licensee, by telephone or in writing, to immediately cease operation for up to 30 days.
- (o) After the Department notifies the licensee, pursuant to Section 102370(n)(1) or (n)(3), or the individual pursuant to Section 102370(n)(2), he or she may present a written appeal that:
- (1) he or she is not the individual who was arrested,
  - (2) he or she has not been arrested for a crime that by law an individual is not eligible to receive an exemption, or
  - (3) he or she was arrested for a crime that by law an individual is not eligible to receive an exemption but the charges have been dropped or reduced to a crime that by law an individual would be eligible to receive an exemption.
- The appeal shall contain the licensee's or individual's current address and telephone number. After the Department receives the appeal and any supporting documentation, it shall review the appeal and notify the licensee or individual of its decision within five (5) working days.
- (p) Should the Department determine at any time during the 30 days referred to in Sections 102370(n)(1), (n)(2), and (n)(3) that the criminal charges have been dropped or reduced to a charge for a crime that by law an individual would be eligible to receive an exemption, the Department shall immediately rescind the notice.
- (q) Nothing in this section shall be interpreted to supercede the Department's authority under Sections 1596.886 and 1596.8897 of the Health and Safety Code.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.871 and 1597.59, Health and Safety Code.

## 102370.1 CRIMINAL RECORD EXEMPTIONS

102370.1

- (a) The Department will notify a licensee to act immediately to remove from the facility or bar from entering the facility any person described in Sections 102370.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (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 Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1596.871(c)(2);
  - (4) Any person who has been convicted of any crime specified below:
    - (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.
  - (6) The Department may assess a civil penalty of \$50 per day for failure to comply with Section 102370.1(a).

**102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)****102370.1**

- (b) In addition to the requirements of Section 102370.1(a), the licensee must:
- (1) Return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
    - (A) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation - Denial, LIC 300B (Rev. 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 9/03).
    - (B) The Department may assess a civil penalty of \$50 per day for failure to comply with Section 102370.1(b).
  - (2) Provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B Rev. 05/03) to one parent or authorized representative of every child currently in care within one day of receipt of the addendum from the Department.
    - (A) Upon notice from the Department that the individual may return to the facility, provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 03/01) to one parent or authorized representative of every child in care within one day of receipt of the notice and addendum from the Department.
  - (3) Obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in 102370.1(b)(2) and (2)(A).
  - (4) Maintain copies of the signed and dated receipt required in Section 102370.1(b)(3) in each child's file. Copies shall be made available to the Department upon request.
- (c) If it is found that the applicant or any other person residing at or regularly in the home during the hours of care, has ever been convicted of a crime other than a minor traffic infraction as specified in Section 102370.1(b), the application for licensure shall be denied or the license shall be revoked, unless the following apply:
- (1) Such person has been granted a full and unconditional pardon for the offense, by the governor.
  - (2) After a review of the criminal record transcript, the Department may grant an exemption from Section 102370(d) if:
    - (A) The applicant/licensee requests an exemption for himself or herself, or

**102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)****102370.1**

- (B) The applicant/licensee requests an exemption in writing for a individual associated with the facility, or
  - (C) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, and the affected individual requests an individual exemption in writing, and
  - (D) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.
- (3) The Department shall consider factors, including, but not limited to, the following, as evidence of good character and rehabilitation:
- (A) The nature of the offense committed including, but not limited to, whether it involved violence or a threat of violence to others.
  - (B) Time elapsed since the offense committed, and the number of offenses.
  - (C) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
  - (D) Activities since conviction, such as employment, education, or participation in therapy, that would indicate rehabilitation.
  - (E) Character references.
    - 1. All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. 7/03]).
  - (F) A Certificate of Rehabilitation from a Superior Court.
  - (G) Evidence of honesty and truthfulness as revealed in exemption application documents.
    - 1. Documents include, but are not limited to:
      - a. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and
      - b. The individual's written statement/explanation of the conviction and the circumstances about the arrest.

**102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)****102370.1**

- (H) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.
- (4) The Department shall also consider the following factors in evaluating a request for an exemption:
  - (A) Facility and type of association.
  - (B) The individual's age at the time the crime was committed.
- (d) To request a criminal record exemption, licensee or license applicants must submit information that indicates that the individual meets the requirements of Section 102370.1(c)(2)(D). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within forty-five (45) days of the date of the Department's notice.
  - (1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing the information required by Section 102370.1(c)(2)(D) and any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 102370.1(c)(3).
  - (2) If the individual for whom the criminal record exemption is requested is an employee or resident other than a 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 cease processing the exemption request and close the case.
  - (3) 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.
  - (4) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:
    - (A) Chooses not to request the exemption and
    - (B) Terminates the individual's employment because of the individual's criminal history, or
    - (C) Removes the individual who resides in the facility because of the individual's criminal history.

**102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)****102370.1**

- (e) 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.
- (f) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (g) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.

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**102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)****102370.1**

- (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 102370.1(o)(1) above, the Department may, in accordance with the provisions in Section 102370.1 et seq., grant or deny the subsequent request for an exemption.
  - (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 102370.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.
- (p) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
- (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 9/03).
  - (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., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).
- (q) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:
- (1) The basis on which the Department granted the exemption;
  - (2) The nature and frequency of client contact in the new position;
  - (3) The category of facility where the individual wishes to transfer;

**102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)****102370.1**

- (4) The type of clients in the facility where the individual wishes to transfer;
  - (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or
  - (6) Whether the exemption meets current exemption laws or regulations.
- (r) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.
- (s) At the Department's discretion, an exemption may be rescinded if it is determined that:
- (1) The exemption was granted in error or
  - (2) The exemption does not meet current exemption laws or regulations or
  - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.
- (t) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
  - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
  - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
  - (4) The individual is convicted of a subsequent crime.
- (u) If the Department rescinds an exemption the Department shall:
- (1) Notify the licensee and the affected individual in writing; and
  - (2) Initiate an administrative action.

**102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)****102370.1**

- (v) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may initiate an administrative action to protect the health and safety of clients.

NOTE: Authority cited: Sections 1596.81 and 1596.871, Health and Safety Code. Reference: Sections 1596.81(b), 1597.59(b), 1596.885, and 1596.8897, Health and Safety Code; and Section 42001, Vehicle Code.

**102370.2 CHILD ABUSE CENTRAL INDEX****102370.2**

- (a) Prior to issuing a license for a family child care home, the Department shall check the Child Abuse Central Index (CACI) pursuant to Health and Safety Code Section 1596.877 and Penal Code Section 11170(b)(3). The Department shall check the CACI for the applicant(s) and all individuals subject to a criminal record review pursuant to Health and Safety Code Section 1596.871(a) and shall have the authority to approve or deny a facility license, employment, residence or presence in the facility based on the results of the review.
- (1) The applicant shall submit the Child Abuse Central Index checks (LIC 198A [3/99] for state licensed facilities and LIC 198 [4/99] for county licensed facilities) for all individuals required to be checked directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 102369(b)(8).
- (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A [3/99]) for state licensed facilities and LIC 198 [4/99] for county licensed facilities) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(f).

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**102370.2 CHILD ABUSE CENTRAL INDEX (Continued)****102370.2**

- (2) The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license based upon a report from the CACI unless the Department substantiates the allegation of child abuse.
- (b) Subsequent to licensure, all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1596.871 shall complete a Child Abuse Central Index check (LIC 198A [3/99]) for state licensed facilities and LIC 198 [02/01] for county licensed facilities), prior to employment, residence or initial presence in the family child care home.
- (1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A [3/99] for state licensed facilities and LIC 198 [02/01] for county licensed facilities) directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 102370(c)(2).
- (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A [3/99]) for state licensed facilities and LIC 198 [4/99] for county licensed facilities) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(f).
- (2) The Department shall check the Child Abuse Central Index (CACI) pursuant to Penal Code Section 11170(b)(3). The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.
- (3) The Department shall investigate any subsequent reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not revoke a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

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

**102371 FIRE SAFETY CLEARANCE****102371**

- (a) A fire safety clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal shall be required for a large family child care home.
- (1) For purposes of Section 102371, "nonambulatory persons" includes the following persons who would be unable to leave a building unassisted under emergency conditions:
    - (A) 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
    - (B) Persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs.
  - (2) The Director of Social Services or his/her designated representative, in consultation with the Director of Developmental Services or his/her designated representative, shall determine the ambulatory or nonambulatory status of persons with developmental disabilities.
  - (3) The Director of Social Services or his/her designated representative shall determine the ambulatory or nonambulatory status of all other disabled persons placed after January 1, 1984, who are not developmentally disabled.
- (b) A fire clearance shall not be required for a small family child care home.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.78, 1596.81(b), 1597.44, 1597.45, 1597.465, 13131, 13131.3 and 13143, Health and Safety Code.

**102395 PENALTIES****102395**

- (a) An immediate penalty of \$100 per cited violation shall be assessed for the following:
- (1) Failure to obtain a California clearance or criminal record exemption, request a transfer of a criminal record clearance or request and be approved for a transfer of an exemption as specified in Section 102370(d) for any individual required to be fingerprinted under Health and Safety Code Section 1596.871 prior to the individual's employment, residence or initial presence in the facility.
    - (A) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.871.
  - (2) Failure to provide a copy of the "Addendum to Notification of Parent's Rights Regarding Exclusion" of an individual from the home, to one parent or authorized representative of every child in care.
    - (A) The requirement to provide a copy shall include the parent of each new child enrolled as long as the exclusion is in effect.
    - (B) The copy shall be provided on the next day that the child receives care.
  - (3) Failure to provide a copy of the "Addendum to Notification of Parent's Rights Regarding Reinstatement" permitting an individual to return to the home, to every parent or authorized representative who received a copy of the "Addendum to Notification of Parent's Rights Regarding Exclusion" and whose child is still in care.
  - (4) Failure to obtain, and keep in the home, a parent's or authorized representative's signature indicating that he/she has been provided with each Addendum.
    - (A) This section shall be cited only if there is evidence that the parent or authorized representative was notified, but a signature was not obtained or was not maintained.
  - (5) Failure to provide signed addenda to the Department, when requested.
- (b) For purposes of Sections 102395(a)(2), (3) and (4) above, a violation shall be cited for each parent or authorized representative that has not been notified or has not signed the form acknowledging receipt of the notice.

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**HANDBOOK BEGINS HERE**

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For example:

If a home has 5 children from 5 different families enrolled and records indicate that the parents of 4 of the children have been notified, that will be one violation.

If a home has 5 children from 4 different families enrolled and records indicate that at least one parent of each of the children has been notified (4 parents), there is no violation.

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- (c) Progressive civil penalties specified in Health and Safety Code Section 1596.99 shall not apply to penalties assessed for violation of Sections 102395(a)(1) through (5) above.
- (d) Unless otherwise provided, all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated in the notice.

NOTE: Authority cited: Sections 1596.81 and 1596.8712(g), Health and Safety Code. Reference: Sections 1596.871, 1596.8712(d) and 1596.99, Health and Safety Code.

**Article 6. CONTINUING REQUIREMENTS****102416 PERSONNEL REQUIREMENTS****102416**

- (a) The licensee shall provide each employee with a copy of the Notice of Employee Rights (LIC 9052 (4/88)) form furnished by the Department.
- (1) Each employee shall be requested to sign and date the notice form acknowledging receipt.
  - (2) A copy of the signed notice form shall be retained in the employee's personnel record.
  - (3) If the employee refuses to sign the notice form, a dated notation to that effect shall be retained in the employee's personnel record.
- (b) A claim by the employee alleging the violation by the licensee of Section 102416(a) shall be presented to the licensee within 45 days after the action as to which complaint is made and presented to the Division of Labor Standards Enforcement not later than 90 days after the action as to which complaint is made.
- (c) The licensee and other personnel as specified shall complete training on preventive health practices, including pediatric cardiopulmonary resuscitation and pediatric first aid, pursuant to Health and Safety Code Section 1596.866.

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**HANDBOOK BEGINS HERE**

- (1) Health and Safety Code Section 1596.866 provides in part:

(a) In addition to any other required training... each family day care home licensee who provides care shall have at least 15 hours of training on preventive health practices. The training shall include pediatric cardiopulmonary resuscitation, pediatric first aid, recognition, management, and prevention of infectious diseases, including immunizations, and prevention of childhood injuries. The training may include training on sanitary food handling, child nutrition, emergency preparedness and evacuation, caring for children with special needs, and identification and reporting of signs and symptoms of child abuse....

(b) ...a licensee of a large family day care home shall ensure that at least one person who has a current certificate in pediatric first aid and pediatric cardiopulmonary resuscitation shall be available at all times when children are present at the facility, or when children are off-site of the facility for facility activities....

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**HANDBOOK CONTINUES**

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**102416 PERSONNEL REQUIREMENTS**  
(Continued)**102416**

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**HANDBOOK CONTINUES**

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(d) Completion of the training required pursuant to subdivisions (a) and (b) shall be demonstrated, upon request of the licensing agency, by the following:

(1) A current pediatric cardiopulmonary resuscitation card issued either by the American Red Cross or the American Heart Association, or by a training program that has been approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(2) A current pediatric first aid card issued either by the American Red Cross or by a training program that has been approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(3) A certificate of completion of a course or courses in preventive health practices as defined in subdivision (a) or certified copies of transcripts that identify the number of hours and the specific course or courses taken for training in preventive health practices as defined in subdivision (a).

(e) The training required under subdivision (a) shall not be provided by a home study course. This training may be provided through on-the-job training, workshops, or classes....

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(d) Prior to employment or initial presence in the child care home, all employees and volunteers subject to a criminal record review shall:

- (1) Obtain a California clearance or a criminal record exemption as required by law or Department regulations or
- (2) Request a transfer of a criminal record clearance as specified in Section 102370(j) or
- (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 102370.1(p), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.866, 1596.880, 1596.881, and 1596.882, Health and Safety Code.

**102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)****102417**

- (n) A family child care home that maintains liability insurance or a bond pursuant to Section 102417(m)(1) or (2), and that provides care in premises that are rented or leased or uses premises which share common space governed by a homeowners' association, shall name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:
- (1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.
  - (2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.
  - (3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.
- (o) The licensee shall maintain proof of control of property at the family child care home for review by the Department.
- (1) If the licensee owns or is buying the home, this is a copy of the property deed, the property tax statement, or a payment coupon from the mortgage company or bank.
  - (2) If the licensee is operating on rented or leased property, this is a copy of the rental agreement or lease.
- (p) A licensee who operates on rented or leased property, and who wishes to increase the capacity of the family child care home as specified in Section 102416.5(b)(3) or Section 102416.5(c)(1), shall obtain the written consent of the property owner/landlord to increase the home's capacity to eight or 14 children.
- (1) The original of the completed and signed consent form shall be attached to the family child care home's license and kept on file in the home.
- (q) A signed and dated copy of LIC 9052 (4/88), Notice of Employee Rights, shall be maintained in the employee's personnel record.

**102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)****102417**

- (r) Upon notice from the Department to remove an individual from the home, pursuant to Health and Safety Code Section 1596.871(c)(2), or to exclude an individual from the home, pursuant to Health and Safety Code Section 1596.8897, the licensee shall:
- (1) Immediately remove the individual and prevent the individual from returning to the home or having contact with children in care.
  - (2) Provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B, Rev. 05/03) to one parent or authorized representative of every child currently in care within one day of receipt of the notice and addendum from the Department.
    - (A) Upon notice from the Department that the individual may return to the home, provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C, Rev. 03/01) to one parent or authorized representative of every child currently in care within one day of receipt of the notice and addendum from the Department.
  - (3) Obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in Section 102417(r)(2).
  - (4) Maintain copies of the signed and dated receipt required in Section 102417(r)(3) in each child's file. Copies shall be made available to the Department upon request.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.78, 1596.81(b), 1596.841, 1596.846(b) and (c), 1596.880, 1596.881, 1596.882, 1597.30, 1597.44, 1597.45, 1597.46, 1597.465, 1597.531, and 1597.54(b)(2), Health and Safety Code.

**102419**    **ADMISSION PROCEDURES AND PARENTAL AND AUTHORIZED REPRESENTATIVE'S RIGHTS** (Continued)    **102419**

- (f) No family child care home shall discriminate or retaliate against any child or any child's parent or authorized representative because the parent or authorized representative has exercised his or her right to inspect the family child care home or has lodged a complaint with the Department against the family child care home.
- (1) If the licensee denies a parent or authorized representative the right to enter and inspect the family child care home or retaliates against any child or any child's parent or authorized representative, the Department shall issue the licensee a warning citation.
  - (2) For any subsequent violation of this right, the Department shall take appropriate action including, but not limited to, license revocation and imposition of a civil penalty upon the home of fifty dollars (\$50) per violation.
  - (3) The person present who is in charge of the family child care home shall determine whether to deny access to the following:
    - (A) An adult whose behavior presents a risk to children present in the home; and
    - (B) A parent who is subject to a court order denying him/her contact with the child if so requested by the child's parent or authorized representative.
- (g) If a child's parent or authorized representative refuses to sign the LIC 995A (8/02), a dated notation to that effect, containing the parent or authorized representative's name and telephone number, shall be kept in the child's record.
- (h) The licensee shall provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B Rev. 05/03) sent by the Department, that is still in effect, to one parent or authorized representative of every child when the parent or authorized representative arranges for child care services or on the first day the child receives care, whichever is first.
- (1) Upon notice from the Department that the excluded/removed individual may return to the facility, the licensee shall provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 03/01) to one parent or authorized representative of every child in Care within one day of receipt of the notice and addendum from the Department.
- (i) The licensee shall obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in Sections 102419(h) and (h)(1).
- (j) The licensee shall maintain copies of the signed and dated receipt required in Section 102419(i) in each child's file. Copies shall be made available to the Department upon request.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.853, 1596.857, 1596.859, 1596.872, 1596.874, 1597.07, 1597.30, and 1597.56, Health and Safety Code.

**102421 CHILD'S RECORDS****102421**

- (a) The licensee shall maintain, in each child's record, the signed and dated notice form required in Section 102419(d).
- (1) The licensee shall keep the signed and dated notice form for at least three years following termination of service to the child.
- (b) The licensee shall maintain, in each child's record, a copy of the emergency information card required in Section 102417(g)(7).
- (c) In any case in which a licensee releases a minor to a peace officer pursuant to Section 305 of the Welfare and Institutions Code, the licensee shall provide the peace officer with the address and telephone number of the minor's parent or authorized representative in order to enable the peace officer to make the notification required by Section 308 of the Welfare and Institutions Code.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.857, 1596.872, 1596.876 and 1597.30, Health and Safety Code.

**102423 PERSONAL RIGHTS****102423**

- (a) Each child receiving services from a family child care home shall have certain rights that shall not be waived or abridged by the licensee regardless of consent or authorization from the child's authorized representative. These rights include, but are not limited to, the following:
- (1) To be treated with dignity in his/her personal relationship with staff and other persons.
- (2) To receive safe, healthful, and comfortable accommodations, furnishings, and equipment.
- (3) To have parents or guardians informed by the licensee of the provisions of the law regarding complaints and the procedures for registering complaints confidentially, including, but not limited to the address and telephone number of the licensing agency's complaint unit.
- (4) To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, coercion, threat, mental abuse, or other actions of a punitive nature, including, but not limited to: interference with eating, sleeping or toileting; or withholding shelter, clothing, medication or aids to physical functioning.
- (b) The licensee shall give authorized representatives of children in care a consumer education and awareness handout. The Department shall provide this handout and distribute it to licensees.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b) and 1597.30, Health and Safety Code.