

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



June 14, 2005

Regulation Package #0803-18

CDSS MANUAL LETTER NO. CCL-05-08

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 12,
CHAPTER 1, CHILD CARE CENTER

Regulation Package #0803-18**Effective 6/8/05****Sections 101200, 101201, 101201, 101217, and 101221**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/ChildCareC_626.htm.

These regulations will give licensing staff the express authority to copy client or facility records, and to remove them if necessary for copying. The existing regulations do not consistently permit the copying of client or facility records, which has been a hindrance to the licensing program. For example, one licensee of a facility being investigated refused even to let licensing staff hand-copy portions of facility files because the regulations did not clearly state that licensing staff could copy those files.

These regulations will correct the situations described above. They delineate and amplify the licensing program's authority to inspect, audit, and copy client or facility records upon demand during normal business hours; and to remove them if necessary for copying. At the same time, the regulations contain safeguards that prohibit the removal of emergency or health-related information (unless other copies of those documents are available) and establish standards for the safe removal and timely return of records to facilities. They cut across facility categories and apply to all licensed adult and elderly community care facilities, children's residential community care facilities, and child day care facilities. These regulations will ensure that CDSS has reasonable access to information in order to be able to better evaluate facilities, investigate complaints, and protect the health and safety of clients in care.

These regulations were considered at the Department's public hearing held on June 16, 2004.

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-05-07. The latest prior manual letter containing Child Care Center regulation changes was Manual Letter No. CCL-04-16.

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Attachments

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101200 **INSPECTION AUTHORITY OF THE DEPARTMENT** **101200**

- (a) The Department has the inspection authority specified in Health and Safety Code Sections 1596.852, 1596.853 and 1596.8535.

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- (1) Health and Safety Code Section 1596.852 provides:

Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, this act or the regulations adopted by the department pursuant to the act.

- (2) Health and Safety Code Section 1596.853 provides in part:

(a) Any person may request an inspection of any child day care facility in accordance with the California Child Day Care Facilities Act by transmitting to the department notice of an alleged violation of applicable requirements prescribed by the statutes or regulations of this state. A complaint may be made either orally or in writing.

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

(c) Upon receipt of a complaint, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, the department shall make an onsite inspection within 10 days after receiving the complaint, except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be promptly informed of the department's proposed course of action.

(d) (1) Upon issuance of a license for a child day care facility or upon denial, revocation, or temporary suspension of a license or within 24 hours of a finding that physical abuse or sexual abuse has occurred, the department shall notify the resource and referral agency funded under Section 8210 of the Education Code for that jurisdiction.

(2) The resource and referral agency shall be notified of the final resolution.

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(2) With the exception of parents seeking local day care service, any other entity specified in subdivision (b) of Section 1596.86 may request that the department provide the notification described in paragraph (1).

(e) When the department substantiates an allegation which it deems to be serious, in a facility funded by the Child Development Division of the State Department of Education pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code it shall notify the Child Development Division.

(3) Health and Safety Code Section 1596.8535(a) provides:

"Notwithstanding any other provision of law, the department shall conduct any authorized inspection, announced site visit, or unannounced site visit of any child daycare facility only during the period beginning one hour before and ending one hour after the facility's normal business hours or at any time childcare services are being provided. This subdivision shall not apply to the investigation of any complaint received by the department if the department determines that an inspection or site visit outside the time period beginning one hour before, and ending one hour after, the facility's normal operating hours is necessary to protect the health or safety of any child in the facility."

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(b) The Department has the authority to interview children or staff without prior consent.

(1) The licensee shall ensure that provisions are made for private interviews with any children or staff members.

(c) The Department has the authority to inspect, audit, and copy child or child care center records upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the requirements in Sections 101217(c) and 101221(d).

(1) The licensee shall ensure that provisions are made for the examination of all records relating to the operation of the child care center.

(d) The Department has the authority to observe the physical condition of the children, including conditions that could indicate abuse, neglect or inappropriate placement.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.852, 1596.853, and 1596.8535, Health and Safety Code.

101201 **EVALUATION VISITS** **101201**

- (a) Child care centers shall be evaluated as specified in Health and Safety Code Sections 1569.8535(a) [as referenced in Section 101200(a)], 1596.98, 1596.99, 1597.08 and 1597.09.

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- (1) Health and Safety Code Section 1596.98(a) provides:

The department shall notify the day care center in writing of all deficiencies in its compliance with this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the center. Upon a finding of noncompliance, the department may levy a civil penalty which shall be paid to the department each day until the department finds the center in compliance.

- (2) Health and Safety Code Section 1596.99 provides in part:

(a) In addition to suspension or revocation of a license issued under this chapter, the Department may levy a civil penalty. The civil penalty may be in addition to the penalties of suspension or revocation.

(b) The amount of the civil penalty may not be less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day for each violation of this chapter except where (1) the nature of the violation, (2) the seriousness of the violation, (3) the frequency of the violation, or (4) any combination of these factors warrants a higher penalty or an immediate civil penalty assessment as specified in subdivision (c), or both. In no event shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day.

- (3) Health and Safety Code Section 1597.08 provides:

All site visits shall be unannounced.

- (4) Health and Safety Code Section 1597.09 provides in part:

"(a) Each licensed child day care center shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

"(b) The department shall conduct an annual unannounced visit to a licensed child day care center under any of the following circumstances:

"(1) When a license is on probation.

"(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

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101201	EVALUATION VISITS (Continued)	101201
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"(3) When an accusation against a licensee is pending.

"(4) In order to verify that a person who has been ordered out of a child day care center by the department is no longer at the facility.

"(c) The department shall conduct an [random] annual unannounced visit to no less than 10 percent of facilities not subject to an evaluation under subdivision (b)...

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

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(b) The Department has the authority to make any number of other visits to a child care center in order to determine compliance with applicable laws and regulations.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.852, 1596.98, 1596.99, 1597.08 and 1597.09, Health and Safety Code.

101202	SERIOUS DEFICIENCIES	101202
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Renumbered to Section 101193 by Manual Letter No. CCL-98-11, effective 11/1/98.

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101216.4	PRESCHOOL PROGRAM WITH TODDLER COMPONENT	101216.4
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(Continued)

- (4) A ratio of six children to each teacher shall be maintained for all children in attendance in the toddler program. An aide who is participating in on-the-job-training may be substituted for a teacher when directly supervised by a fully qualified teacher.
- (5) The maximum group size, with two teachers, or one fully qualified teacher and one aide, shall not exceed 12 toddlers.
- (6) The toddler program shall be conducted in areas physically separate from those used by older or younger children. Space planning and usage for the toddler component shall be governed by the provisions of Section 101438.3. Plans to alternate use of outdoor play space must be approved by the Department.
 - (A) Requirements for physical separation between children in the toddler component and older or younger children need not apply when a planned activity is being conducted.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Section 1596.955, Health and Safety Code.

101216.5	STAFFING -- PARENT-COOPERATIVE CENTERS	101216.5
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- (a) Parent-cooperative centers shall employ a full-time teacher in addition to the director and participating parents when the number of children reaches 25.
- (b) There shall be at least one staff member or participating parent present for each five children in attendance.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1597.05, Health and Safety Code.

101216.6 STAFFING FOR WATER ACTIVITIES **101216.6**

- (a) There shall be at least one adult who has a valid water-safety certificate on file at the center present during water activities in or near any of the following bodies of water:
- (1) Swimming pool.
 - (2) Any portable pool with sides so high that children using the pool cannot step out unassisted by a person or device (including a ladder).
 - (3) Potentially dangerous natural bodies of water including, but not limited to, oceans, lakes, rivers and streams.
- (b) A ratio of not less than one adult, including teachers, to every six children, or fraction thereof, shall be maintained during water activities in or near any of the bodies of water specified in (a)(1) through (3) above.
- (1) Lifeguards or personnel supervising anyone other than center children at the water activity site shall not be included in this ratio.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.87 and 1597.05, Health and Safety Code.

101217 PERSONNEL RECORDS **101217**

- (a) The licensee shall ensure that personnel records are maintained on the licensee, administrator and each employee. Each personnel record shall contain the following information:
- (1) Employee's full name.
 - (2) Driver's license number if the employee is to transport children.
 - (3) Date of employment.
 - (4) A statement signed by the employee that he/she is at least 18 years of age.
 - (5) Current home address and phone number.
 - (6) Documentation of the educational background, training and/or experience specified in this chapter.
 - (7) Past experience, including types of employment and former employers.
 - (8) Duties of the employee.
 - (9) Termination date if no longer employed by the child care center.

101217	PERSONNEL RECORDS (Continued)	101217
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- (10) A signed and dated copy of a Notice - Employee Rights (LIC 9052 [3/03]).
 - (11) A health screening as specified in Section 101216(g).
 - (12) Tuberculosis test documents as specified in Section 101216(g).
 - (13) A signed statement regarding their criminal record history as required by Section 101170(d).
 - (14) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 101170(e).
- (b) Personnel records shall be maintained for all volunteers and shall contain the following:
- (1) A health statement as specified in Section 101216(g).
 - (2) Tuberculosis test documents as specified in Section 101216(g)(3).
 - (3) For volunteers that are required to be fingerprinted pursuant to Section 101170:
 - (A) A signed statement regarding their criminal record history as required by Section 101170(d).
 - (B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 101170(e).
- (c) All personnel records shall be available to the Department to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following requirements:
- (1) Licensing representatives shall not remove the following current records for current personnel unless the same information is otherwise readily available in another document or format.
 - (A) Health-screening records and results of tuberculosis tests as specified in Section 101216(g).
 - (B) Documentation of completion of health and safety training as specified in Sections 101215.1(m), 101216(f), and 101216.1(i).
 - (C) Any other records containing current emergency or health-related information for current personnel.
 - (2) Prior to removing any records, a licensing representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.

101217 PERSONNEL RECORDS **101217**
(Continued)

- (3) Licensing representatives shall return the records undamaged and in good order within three business days following the date the records were removed.
- (d) All personnel records shall be kept for at least three years following termination of employment.
- (e) All personnel records shall be maintained at the child care center and shall be available to the licensing agency for review.
 - (1) The licensee may keep such records in a central administrative location provided that they are readily available to the Department at the child care center site as specified in Section 101217(c).
- (f) In all cases, personnel records shall document the hours actually worked.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.880, 1596.881 and 1596.882, Health and Safety Code.

101218 ADMISSION POLICIES **101218**

- (a) Every child care center shall have all admission policies in writing and available to the public. The policies shall coincide with the limitations stated on the license, and shall include, but not be limited to, the following:
 - (1) Written admission criteria designating those children whose needs can be met by the center's program and services.
 - (2) The ages of children who will be accepted.
 - (3) The program activities.
 - (4) The supplementary services provided, if any.
 - (5) Field-trip provisions, if any.
 - (6) Transportation arrangements, if any.
 - (7) Food-service provisions.
 - (8) Medical-assessment requirement.
- (b) A licensee who provides care to a child with disabilities shall be able to meet the individual needs of the child.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1597.05, Health and Safety Code.

101220.1 IMMUNIZATIONS (Continued) **101220.1**

- (f) As required by the California Code of Regulations, Title 17, Section 6035(b), a child who does not meet any of the requirements in Sections 101220.1(c), (d) or (e) above shall not be admitted to a child care center.
- (g) The licensee shall document each child's immunizations and shall maintain such documentation in the center for as long as the child is enrolled.
 - (1) This requirement includes updating each child's immunization record when the child is due to receive required immunizations after enrollment in the child care center.

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- (h) The California Code of Regulations, Title 17, Section 6075, specifies in pertinent part that each child care center shall report to state and local health departments as follows:
 - (1) The ... child care center ... shall file a report with the state and local health departments on the immunization status of new entrants annually or when needed to determine immunization status such as during an epidemic or potential epidemic.... The Department of Health Services or the local health department will provide the appropriate reporting form.

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- (i) The licensee is not required to document immunizations of children also enrolled in a public or private elementary school.

NOTE: Authority cited Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1597.05 and 1596.794, Health and Safety Code.

101221 CHILD'S RECORDS **101221**

- (a) The licensee shall ensure that a separate, complete and current record for each child is maintained in the child care center.
- (b) Each record shall contain information including, but not limited to, the following:
 - (1) Name of child.
 - (2) Birthdate.

101221	CHILD'S RECORDS (Continued)	101221
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- (3) Sex.
 - (4) Date of Admission.
 - (5) Name, address and telephone number of the child's authorized representative and of relatives or others who can assume responsibility for the child if the authorized representative cannot be reached when necessary.
 - (6) A signed copy of the admission agreement specified in Section 101219.
 - (7) Name, address and telephone number of the child's physician and dentist and any other medical/dental or mental health providers.
 - (8) Medical assessment, including ambulatory status as specified in Section 101220, and the following health information:
 - (A) Dietary restrictions and allergies.
 - (B) Instructions for action to be taken in case the child's authorized representative, or the physician designated by the authorized representative, cannot be reached in an emergency.
 - (C) A signed consent form for emergency medical treatment unless the child's authorized representative has signed the statement specified in Section 101220(f).
 - (9) Record of any illness or injury requiring treatment by a physician or dentist and for which the center provided assistance to the child in meeting his/her necessary medical or dental needs.
 - (10) Record of current medications, including the name of the prescribing physician, and instructions, if any, regarding control and custody of medications.
 - (11) Signed and dated authorization from the child's authorized representative for each activity away from the center.
 - (12) Date of termination of services.
- (c) All information and records obtained from or regarding children shall be confidential.
- (1) The licensee shall be responsible for safeguarding the confidentiality of record contents.

101221 **CHILD'S RECORDS** (Continued) **101221**

- (2) Except as specified in (d) below, or as otherwise authorized by law, the licensee and all employees shall not reveal or make available confidential information.

- (d) All children's records shall be available to the Department to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following requirements:
 - (1) Licensing representatives shall not remove the following current records for current children in care unless the same information is otherwise readily available in another document or format:
 - (A) Name, address and telephone number of the child's authorized representative, and of relatives or others who can assume responsibility for the child if the authorized representative cannot be reached, as specified in Section 101221(a)(5).
 - (B) Name, address and telephone number of the child's physician, dentist and any other health-care providers as specified in Section 101221(a)(7).
 - (C) Medical assessment and other information as specified in Section 101221(a)(8).
 - (D) Records of any current illness or injury as specified in Section 101221(a)(9).
 - (E) Record of current medications as specified in Section 101221(a)(10).
 - (F) Any current authorizations for children's activities away from the center as specified in Section 101221(a)(11).
 - (G) Immunization records as specified in Section 101220.1(g).
 - (H) Any other records containing current emergency or health-related information for current children in care.
 - (2) Prior to removing any records, a licensing representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.
 - (3) Licensing representatives shall return the records undamaged and in good order within three business days following the date the records were removed.

- (e) A child's records shall also be open to inspection by the child's authorized representative.

- (f) The information specified in (b)(1) through (b)(12) above shall be updated as necessary to ensure the accuracy of the child's record.

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101221 CHILD'S RECORDS (Continued) 101221

- (g) Originals or photocopies of all children's records shall be kept for at least three years following termination of service to the child.
- (h) The licensee shall provide the name, address and telephone number of the child's authorized representative to a peace officer as specified in Health and Safety Code Section 1596.876.

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Health and Safety Code Section 1596.876 provides:

In any case in which a child day care facility releases a minor to a peace officer pursuant to Section 305 of the Welfare and Institutions Code, the official in charge of that facility shall provide the peace officer with the address and telephone number of the minor's parent or guardian in order to enable the peace officer to make the notification required by Section 308 of the Welfare and Institutions Code.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.857, 1596.876 and 1597.05, Health and Safety Code; and *Golden Day Schools, Inc. v. Pirillo* (C.D. Cal 2000) 118 F.Supp.2nd 1037.

101223 PERSONAL RIGHTS 101223

- (a) The licensee shall ensure that each child is accorded the following personal rights:
 - (1) To be accorded dignity in his/her personal relationships with staff and other persons.
 - (2) To be accorded safe, healthful and comfortable accommodations, furnishings and equipment to meet his/her needs.

101223 **PERSONAL RIGHTS (Continued)** **101223**

- (3) 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 functions of daily living including eating, sleeping or toileting; or withholding of shelter, clothing, medication or aids to physical functioning.
- (4) To be informed, and to have his/her authorized representative informed, by the licensee of the law regarding complaints including, but not limited to, information on confidentiality and the address and telephone number of the Department's complaint unit.

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- (A) Provisions regarding inspection requests are found in Health and Safety Code Section 1596.853:
 - 1. Any person may request an inspection of any child day care facility in accordance with the California Child Day Care Facilities Act by transmitting to the department notice of an alleged violation of applicable requirements prescribed by statutes or regulations of this state....
 - 2. The substance of the complaint shall be provided to the licensee no earlier than at the time of the inspection....
 - 3. Upon receipt of a complaint, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, the department shall make an onsite inspection within 10 days after receiving the complaint. In either event, the complainant shall be promptly informed of the department's proposed course of action.

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- (5) To be free to attend religious services or activities of his/her choice.
 - (A) Attendance at religious services in or outside of the center shall be voluntary. The child's authorized representative shall make decisions about the child's attendance at religious services.
- (6) Not to be locked in any room, building or center premises by day or night.