

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



September 27, 2006

Regulation Package #1105-17

CDSS MANUAL LETTER NO. CCL-06-06

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22,
DIVISION 12, CHAPTER 3, FAMILY CHILD CARE HOMES

Regulation Package # 1105-17**Effective 8/10/06****Sections 102370, 102370.1, and 102395**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/FamilyChil_627.htm.

These regulations add or make changes to the Criminal Record Clearance sections in six regulation categories; add or make changes to the Criminal Record Exemption sections in five regulation categories; and add or make changes to the Penalties sections in five regulation categories. All revised or added regulations are mandated by Health and Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871, which were amended by SB 1240, Chapter 653, Statutes of 2004, AB 358, Chapter 628, Statutes of 2004 and the Gresher v. Anderson decision (Alameda County Superior Ct. No. 8074577). SB 1240 increases an existing one time civil penalty for allowing an individual to work or reside in a licensed facility without a criminal record clearance or exemption to an ongoing, per day civil penalty. SB 1240 also allows for the transfer of criminal history information between county and state licensing agencies. AB 358 expands the list of persons who are exempt from submitting fingerprints for a criminal background check. The Gresher v. Anderson decision; permits certified family home employees to seek a criminal record exemption on their own behalf; permits terminated employees to seek a criminal record exemption after their employers received a notice from the licensing agency about his/her criminal history, without requiring that the notice caused the termination; requires that the licensing agency list the convictions that require a criminal record exemption; and requires that the licensing agency list the specific reason(s) the exemption was denied.

Section 102370 specifies who must submit fingerprints for a criminal record review and who is exempt; that persons subject to a criminal record review be cleared or have a criminal record exemption prior to working or residing in a licensed facility; and the resulting civil penalty for violation of background check requirements. Section 102395 allows for the assessment of civil penalties for violation of licensing regulations. Section 102370 was amended to allow the transfer of criminal record clearance information between county and state licensing agencies. Sections 102370 and 102395 were amended to increase an existing one time, \$100 background check violation civil

penalty to a \$100 per day, for a maximum of five days civil penalty, for initial violations and \$100 per day, for a maximum of 30 days, civil penalty for subsequent violations.

Section 102370.1 specifies the entire criminal record exemption process. Regulations were amended to; allow certified family home employees to seek an exemption on their own behalf; permit terminated employees to seek an exemption after their employers received a notice from the licensing agency about his/her criminal history, without requiring that the notice caused the termination; require that the exemption needed notice, sent to the affected individual by the licensing agency, list the convictions that require an exemption; and require that exemption denial notices specify the reason the exemption was denied. Additionally, Section 102370.1 was also amended to allow the transfer of criminal record exemption information between county and state licensing agencies.

These regulations were effective August 10, 2006 and were considered at the Department's public hearings held on February 15, 2006.

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-06-05. The latest prior manual letter containing Family Child Care Homes regulation changes was Manual Letter No. CCL-05-14.

<u>Page(s)</u>	<u>Replace(s)</u>
16.2 through 18.1	Pages 16.2 through 18.1
19.2 through 19.4	Pages 19.2 through 19.4
20.4 through 23	Pages 20.4 through 23
29.1 through 29.2	Pages 29.1 through 29.2

Attachments

NH

102369 APPLICATION FOR INITIAL LICENSE (Continued)**102369**

- (C) Any staff person or employee who has contact with the children.
- (D) Repealed by CDSS Manual Letter No. CCL-00-10, effective 5/18/00.

HANDBOOK BEGINS HERE

1. Section 1596.871(f) of the Health and Safety Code provides in part:

No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section.

2. Section 1596.871(b)(2) of the Health and Safety Code provides in part:

Any person, other than a child, residing in the facility.

3. Section 1596.871(c)(3) of the Health and Safety Code provides in part:

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision.

HANDBOOK ENDS HERE

- (9) Evidence of a current tuberculosis clearance, not more than one year prior to or seven days after initial presence in the home, for any adult in the home during the time that children are under care.
- (10) Name, address and telephone number of the city or county fire department, the district providing fire protection services, or the State Fire Marshal's Office having jurisdiction where the family day care home is located.

102369 APPLICATION FOR INITIAL LICENSE (Continued)**102369**

- (c) Prior to filing an application, the applicant shall attend an orientation provided by the licensing agency.
- (1) The orientation shall cover, but not be limited to, the following areas:
- (A) Completion of the application for license.
- (B) Scope of operation subject to regulation by the Department.
- (d) Repealed by CDSS Manual Letter No. CCL-00-10, effective 5/18/00.

HANDBOOK BEGINS HERE

- (1) Section 1596.877 of the Health and Safety Code provides in part:
- (A) Prior to granting a license to any individual to or otherwise approving, any family day care home, the department shall check the child abuse and neglect complaint records of the child protective services agency of the county in which the applicant has resided for the two years preceding the application.
- (B) Prior to granting a license to or otherwise approving any individual to care for children in either a family day care home or a day care center, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code.
- (C) The department shall investigate any reports received from the Child Abuse Registry and investigate any information received from the county child protective services agency. However, child protective services agency information arising from a report designated as "unfounded," as defined pursuant to subdivision (a) of Section 11165.12 of the Penal Code, shall not be included in the investigation. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective services agency that investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry or based on child abuse and neglect complaint records of the county child protective services agency unless child abuse is substantiated.

HANDBOOK ENDS HERE

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.877, 1597.45, 1597.46, 1597.54, and 1597.57, Health and Safety Code.

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 per day for a maximum of five (5) days by the Department.

102370 CRIMINAL RECORD CLEARANCE (Continued) 102370

- (1) Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days.
- (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.99.
- (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) 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.
- (i) 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).

HANDBOOK BEGINS HERE

- (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.

HANDBOOK ENDS HERE

- (j) A criminal record clearance may be transferred between state and county licensing agencies or between county licensing agencies provided:
 - (1) The transfer is to the same facility type.
 - (2) The individual and the licensing agency that processed the clearance submit a Substitute Agency Notification Request (BCII 9002) to the receiving licensing agency.
 - (3) The receiving licensing agency submits the Substitute Agency Notification Request (BCII 9002) to the Department of Justice.
 - (4) The Department of Justice approves the request and returns a completed BCII 9002 to the receiving agency.
- (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: Sections 1596.81 and 1596.98(c), Health and Safety Code. Reference: Sections 1596.871, 1596.99, and 1597.59, Health and Safety Code.

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 notify the licensee or license applicant and the affected individual, in concurrent, separate notices, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
 - (1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in an exemption request.
 - (2) The notice will list the information that must be submitted to request a criminal record exemption.
 - (3) The information must be submitted within forty-five (45) days of the date of the Department's notice.
 - (A) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing 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).
 - (B) 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.
 - (C) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may deny the exemption request.

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

- | (D) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:
 - | 1. Chooses not to request the exemption and
 - | 2. Chooses not to employ or terminates the individual's employment after receiving notice of the individual's criminal history, or
 - | 3. Removes the individual who resides in the facility after receiving notice of the individual's criminal history.

- (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**

HANDBOOK CONTINUES

- (44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.
- (45) Penal Code Sections 664/187 – Any attempted murder.
- (46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.
- (47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
- (48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
- (49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.
- (50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.
- (51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.
- (52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

HANDBOOK ENDS HERE

- (l) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 102370.1(l)(1) through (4) below:
 - (1) The individual does not have a demonstrated pattern of criminal activity;
 - (2) The individual has no more than one conviction;
 - (3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and
 - (4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

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

- (m) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.
- (n) If the Department denies or cannot grant a criminal record exemption the Department will:
- (1) For initial applicants, deny 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, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility, or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
 - (5) Exemption denial notices shall specify the reason the exemption was denied.
- (o) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 102370.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
- (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.
 - (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.

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) A criminal record exemption may be transferred between state and county licensing agencies or between county licensing agencies provided:
- (1) The transfer is to the same facility type.
 - (2) The individual and the licensing agency that processed the exemption submit a Substitute Agency Notification Request (BCII 9002) to the Department of Justice.
 - (3) The receiving licensing agency submits the Substitute Agency Notification Request (BCII 9002) to the receiving agency.
 - (4) The Department of Justice approves the request and returns a completed BCII 9002 to the receiving agency.
 - (5) The licensing agency approves the exemption transfer after considering the following:
 - (A) The basis on which the licensing agency granted the exemption.
 - (B) Whether the exemption was appropriately evaluated and granted.
- (t) 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.

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

- (u) 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.
- (v) 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.
- (w) 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: Section 1596.81, Health and Safety Code. Reference: Sections 1596.871, 1596.885, 1596.8897, and 1597.59(b), Health and Safety Code; and Gresher v. Anderson (2005) 127 Cal. App. 4th 88.

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).

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

- (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 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 per day for a maximum of five (5) days 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 allowing the individual to work, reside or volunteer in the facility.
 - (A) Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days.
 - (B) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.99.
 - (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.

HANDBOOK BEGINS HERE

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: Section 1596.81, Health and Safety Code. Reference: Sections 1596.871, 1596.8712(d) and 1596.99, Health and Safety Code.