

86519.1 CRIMINAL RECORD EXEMPTION (Continued)**86519.1****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 without the possibility of parole.
47. Penal Code Section 667.5(c)(8)* - Enhancement for any felony which inflicts great bodily injury.
48. Penal Code Sections 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 12022.53 – Enhancement for listed felonies where use of a firearm.
50. Penal Code Section 11417(b) or (c) – Use of weapon of mass destruction.
51. Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

* See Health and Safety Code Section 1522(g)(1)(A)(ii) for exception.

** A conviction for the attempt to commit these crimes is also non-exemptible, as specified at Penal Code Section 290(a)(2)(A).

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- (n) The Department shall consider granting a simplified criminal record exemption only if the individual has the following criminal history profile:
 - (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.

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- (o) 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 children.
- (p) If the Department denies or cannot grant a criminal record exemption the Department shall:
- (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 1558, deny the application or revoke the license, if the individual continues to provide services at the crisis nursery.
 - (4) For individuals residing in the crisis nursery, exclude the affected individual pursuant to Health and Safety Code Section 1558, deny the application or revoke the license, if the individual continues to provide services at the crisis nursery.
- (q) 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 86519.1(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 crisis nursery, unless either a petition or an exemption is granted.
 - (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 86519.1(q)(1), the Department may, according to the provisions in Sections 86519.1 grant or deny the subsequent request for an exemption.

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- (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 crisis nursery, along with all information required of an individual requesting a criminal record exemption as provided in Section 86519.1. 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.
- (r) A licensee or applicant for a crisis nursery 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.
 - (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, such as a job duty statement, job description for the prospective position, resume or a document that justifies the transfer.
- (s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve an exemption transfer:
- (1) The basis on which the Department granted the exemption;
 - (2) The nature and frequency of contact with children in the new position;
 - (3) The category of facility where the individual wishes to transfer;
 - (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.

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- (t) 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 notice that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.
- (u) 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.
- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct that 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 a child;
 - (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.
- (w) 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.
- (x) If the Department learns that an individual with a criminal record clearance or exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate an administrative action to protect the health and safety of children in a crisis nursery.

NOTE: Authority Cited: Section 1522 and 1530, Health and Safety Code. Reference: Sections 1516, 1522, and 1531, Health and Safety Code; Gresher v. Anderson (2005) 127 Cal. App. 4th 88; and Glesmann v. Saenz (2006) 140 Cal.App.4th960.

86519.2 CHILD ABUSE CENTRAL INDEX**86519.2**

- (a) Prior to issuing a crisis nursery license, the Department shall conduct a Child Abuse Central Index (CACI) review pursuant to Health and Safety Code Section 1522.1 and Penal Code Section 11170(b)(3). The Department shall check the CACI for all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1522(b) and shall approve or deny a crisis nursery license, employment, residence, or presence in the crisis nursery based on the results of the review.
- (1) The applicant shall submit the Child Abuse Central Index check (LIC 198A), which is incorporated by reference for state licensed facilities, and LIC 198, which is incorporated by reference 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 86519, Criminal Record Clearance.
- (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if they can transfer their criminal record clearance or exemption pursuant to Section 86519(f) or Section 86519.1(r).
- (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 protection 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 1522(b), shall complete a Child Abuse Central Index check (LIC 198A) prior to employment, residence, or initial presence in the crisis nursery.
- (1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A) directly to the California Department of Justice at the same time that the individuals' fingerprints are submitted for a criminal background check as required by Section 86519(d).

86519.2 CHILD ABUSE CENTRAL INDEX (Continued)**86519.2**

- (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if they can transfer their criminal record clearance or exemption pursuant to Section 86519(e) or Section 86519.1(f).
- (2) The Department shall check the CACI pursuant to Penal Code Section 11170(b)(3), and 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 1530, Health and Safety Code. Reference: Sections 1516, 1521, 1522, 1522.04, and 1531, Health and Safety Code.

86520 FIRE CLEARANCE**86520**

- (a) All crisis nurseries shall secure and maintain a fire clearance approved by the city or county fire department, or the district providing fire protection services, or the State Fire Marshal.
 - (1) The request for fire clearance shall be made through and maintained by the Department.
- (b) The applicant shall notify the Department if the crisis nursery plans to admit children who are non ambulatory as defined in Section 86501(n), so that an appropriate fire clearance, approved by the city or county fire department, or the district providing fire protection services, or the State Fire Marshal, can be obtained prior to the acceptance of such children.
 - (1) Repealed by Manual Letter No. CCL-07-08, effective 12/31/07.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, 1520, and 1531, Health and Safety Code.

86521 WATER SUPPLY 86521

(a) All crisis nurseries where water for human consumption is from a private water source shall meet the following requirements:

(1) As a condition of initial licensure, the applicant shall provide evidence of an on-site inspection of the private water source and a bacteriological analysis which establishes the safety of the water, conducted by the local health department, the California Department of Public Health, or a licensed commercial laboratory.

(2) Subsequent to initial licensure, the licensee shall provide evidence of a bacteriological analysis of the private water source as frequently as necessary to ensure childrens' safety, but no less frequently than specified in the following table:

<u>LICENSED CAPACITY</u>	<u>ANALYSIS REQUIRED</u>	<u>PERIODIC SUBSEQUENT ANALYSIS</u>
6 or fewer	Initial Licensing	Not required unless evidence supports the need for such analysis to protect clients.
7 through 14	Initial Licensing	Annually

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, 1520, and 1531, Health and Safety Code.

86522 PLAN OF OPERATION 86522

(a) Each licensee shall have and maintain on file a current, written, definitive plan of operation.

(b) The plan and related materials shall contain the following:

(1) Statement of purposes, and program methods and goals.

(2) Statement of admission policies and procedures regarding acceptance of children.

(3) Description of services to be provided.

(4) Description of children to be served.

86522 PLAN OF OPERATION (Continued)**86522**

- (5) A copy of the admission form as specified in Section 86568.1(c)(2).
- (6) Administrative organization.
- (7) Staffing plan, description of staffing pattern, qualifications and duties.
 - (A) The provision of care by the lead caregiver.
 - (B) The provision for breaks, vacations, and sick days for the lead caregiver while ensuring that another qualified lead caregiver cares for the children.
 - (C) Description of how the crisis nursery will deal with unexpected circumstances related to staffing and ensure that additional caregivers are available when needed.
- (8) A written staff training plan for the orientation, continuing education, on-the-job training and development, supervision, and evaluation of all lead caregivers, caregivers, and volunteers.
- (9) A sketch of the building(s) to be occupied, including a floor plan which describes the capacities of the buildings for the uses intended, room dimensions, and a designation of the rooms to be used for nonambulatory children, if any
- (10) A sketch of the grounds showing buildings, driveways, fences, storage areas, pools, gardens, recreation areas and other space used by the children.
 - (A) The sketch shall include the dimensions of all areas which will be used by the children.
- (11) Sample menus and a schedule for one calendar week indicating the time of day that meals and snacks are to be served.
- (12) A statement whether or not the licensee will handle the child's personal property, or valuables. If personal property, or valuables will be handled, the method for safeguarding that shall ensure compliance with Section 86526, Safeguards for Personal Property and Valuables.
- (13) Description of consultant and community resources to be utilized by the crisis nursery as part of its program.
- (14) A statement of the crisis nursery's policy concerning family visits and other communications with the child pursuant to Health and Safety Code Section 1512, that shall permit flexible visitation hours allowing family members' daily visitation and the opportunity to participate in caregiving.

86522 PLAN OF OPERATION (Continued) 86522

- (15) Transportation arrangements for children who do not have independent arrangements.
 - (16) Procedures for responding to complaints and emergencies on a 24-hour basis.
 - (17) The policies and procedures for family member involvement in caregiving.
 - (18) The toilet training policies and procedures.
 - (19) The plan for indoor and outdoor activities designed to meet the developmental and therapeutic needs of children.
 - (A) This plan must include quiet and active play, rest and relaxation, eating toileting, individual attention from the lead caregiver or caregiver staff, and activities that foster the child's cognitive development.
 - (20) The policies and procedures for discipline and guidance.
 - (21) The policies and procedures to prevent disease and control infection.
 - (22) The necessary steps to be taken to reduce stress to the child(ren) that may result in transfer trauma, such as admission and discharge, and changes in staffing pattern.
 - (23) The policies and procedures that ensure consistency and continuity of care to children by minimizing the number of different caregivers or volunteers who would provide care and supervision, including, but not limited to, developing a consistent work schedule.
- (c) If the licensee intends to admit or specialize in care for one or more child(ren) who has a propensity for behaviors that result in harm to self or others, the plan of operation shall include a description of precautions that will be taken to protect that child and all other children.
- (d) If the Crisis Nursery is to provide Crisis Day Services, the plan of operation must specify the hours during which crisis day services, as defined in Section 86501(c)(16), are to be provided, not to exceed 14 hours per day.
 - (1) The plan of operation shall assure that sleeping arrangements are available for children there after 7 p.m.
- (e) Any changes in the plan of operation which affect the services to children shall be subject to Department approval and shall be reported as specified in Section 86561(d).
- (f) The crisis nursery shall operate in accordance with the terms specified in the plan of operation and may be cited for not doing so.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1512, 1516, 1520, 1526.8 and 1531, Health and Safety Code.

86523 EMERGENCY PLAN**86523**

- (a) The licensee shall develop and provide a current, written emergency plan to the Department and post a copy of the emergency plan in the crisis nursery.
- (b) The emergency plan shall include instructive procedures and information, telephone numbers for local emergency agencies, and a 24-hour emergency number for the licensee and the child's authorized representative.
- (c) The licensee shall ensure that staff understand and are capable of implementing the emergency plan.
- (d) Emergency training exercises shall be conducted at least every six months.
 - (1) Completion of such training exercises shall not require travel away from the crisis nursery grounds or contact with local emergency agencies.
 - (2) Emergency training exercises shall be documented, signed and maintained on file in the crisis nursery for at least one year.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, 1520, and 1531, Health and Safety Code.

86524 WAIVERS AND EXCEPTIONS**86524**

- (a) Unless prior written Department approval is received as specified in Section 86524(d), the licensee shall maintain continuous compliance with the licensing regulations.
- (b) The Department shall have the authority to waive or grant an exception to a specific regulation(s) if the request demonstrates how the intent of the regulation(s) will be met and under the following circumstances:
 - (1) A waiver or exception shall in no instance be detrimental to the health and safety of any child.
 - (2) The Administrator or Administrator Designee shall submit to the Department a written request for a waiver or exception, together with substantiating evidence supporting the request.
- (c) Within 30 days of receipt of a request for a waiver or an exception, except for requests made pursuant to subsection (e), the Department shall notify the crisis nursery, in writing, of one of the following:
 - (1) The request with substantiating evidence has been received and accepted for consideration.

86524 WAIVERS AND EXCEPTIONS (Continued) 86524

- (2) The request is deficient, needing additional information as described for the request to be acceptable and a time frame for submitting this information.
 - (A) Failure to submit the requested information within the time specified shall result in denial of the request.
- (d) Within 30 days of the Department's acceptance of a completed request for a waiver or an exception, except for requests made pursuant to subsection (e), the Department shall notify the applicant or licensee, in writing, whether the request has been approved or denied.
 - (1) The licensee shall retain the Department's written approval or denial of the request in the crisis nursery file.
- (e) A crisis nursery may request an exception from the Department to allow a child to receive crisis day services at the crisis nursery beyond the limit of 30 calendar days, maximum of 12 hours per day, or a total of 360 hours in a six-month period as specified in Section 86580. The Department, upon receipt of an exception request pursuant to this subsection and supporting documentation as required by the Department, shall respond within five working days to approve or deny the request.
 - (1) No more than two exceptions, in seven-calendar day or 84-hour increments, may be granted per child in a six-month period.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1509, 1516, and 1531, Health and Safety Code.

86526 SAFEGUARDS FOR PERSONAL PROPERTY AND VALUABLES 86526

- (a) Each child's personal property and valuables shall be separate and intact.
- (b) The licensee shall ensure that accurate records of personal property and valuables entrusted to the crisis nursery are maintained.
- (c) When a child leaves placement in the crisis nursery, the administrator or designee shall surrender all of the child's personal property and valuables to the child's authorized representative.
 - (1) The administrator or designee shall obtain and retain a receipt signed by the authorized representative.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, 1520, and 1531, Health and Safety Code.

86527 INITIAL REVIEW OF APPLICATION**86527**

- (a) Within 90 days of receipt by the Department of the application and supporting documents described in Section 86518, Application For A License, the Department shall give written notice to the applicant of one of the following:
- (1) The application is complete and accepted for consideration.
 - (2) The application is deficient, describing what documents are missing or inadequate, and informing the applicant that the information must be submitted within 30 days of the date of the notice.
 - (A) If the applicant does not submit the requested information within the 30 days, the application shall be deemed withdrawn unless either the Department has denied the application or the crisis nursery is under construction.
- (b) The Department shall cease review of any application under the conditions specified in Health and Safety Code Section 1520.3.

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- (1) Health and Safety Code Section 1520.3 provides in part:
 - "(a)(1) If an application for a license... or the department determines during the application review process, that the applicant previously was issued a license... and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of such revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other provision of law....
 - "(b) If an application for a license... or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall cease further review of the application as follows:
 - (1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

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86527 INITIAL REVIEW OF APPLICATION (Continued)

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(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which either have been corrected or are no longer in existence....

"(d) The cessation of review shall not constitute a denial of the application...."

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(c) If cessation of review occurs, the application shall be returned to the applicant. It shall be the responsibility of the applicant to request resumption of review as specified in Health and Safety Code Section 1520.3(b)(3).

(1) The application processing fee shall be nonrefundable as specified in Section 86536(b).

(d) The circumstances and conditions in which the Department may continue to review a previously denied application shall include, but are not limited to, the following:

(1) A fire clearance previously denied, but now approved;

(2) An Administrator who did not meet the minimum qualifications, but now fulfills the qualifications; or

(3) A person with a criminal record, which was the basis for license denial, is no longer associated with the crisis nursery.

(e) The application shall not constitute approval of the application.

86527 INITIAL REVIEW OF APPLICATION (Continued)**86527**

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- (f) The Department shall complete the following as part of the application review process:
- (1) A site visit to the proposed crisis nursery and a determination of the qualifications of the administrator.
 - (2) A determination that the applicant has secured an appropriate fire clearance from the State Fire Marshal, if required.
 - (3) A determination that the applicant has the ability to comply with the provisions of the Community Care Facilities Act and the regulations in Chapter 7.3.
 - (4) Repealed by Manual Letter No. CCL-07-08, effective 12/31/07.

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NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1516, 1520, and 1520.3, Health and Safety Code.

86528 CAPACITY DETERMINATION**86528**

- (a) A crisis nursery license shall be issued for a specific capacity.
- (1) The maximum licensed capacity for a crisis residential overnight program shall be 14 children.
 - (2) Any facility licensed on or before January 1, 2004, as a group home for children under the age of six years with a licensed capacity of greater than 14, but less than 21, that provides crisis nursery services, shall be allowed to retain its capacity if issued a crisis nursery license until the time there is a change in the licensee's program, location, or client population.
 - (3) The maximum licensed capacity for crisis day services shall be based on 35 square feet of indoor activity space per child. Bedrooms, bathrooms, halls, offices, isolation areas, food-preparation areas, and storage places shall not be included in the calculation of indoor activity space. The floor area under tables, desks, chairs, and other equipment intended for use as part of children's activities shall be included in the calculation of indoor space.
 - (4) There shall be at least 75 square feet per child of outdoor activity space based on the total licensed capacity. Swimming pools, adjacent pool decking, and natural or man-made hazards shall not be included in the calculation of outdoor activity space.
 - (5) A child who has been voluntarily placed in a crisis residential overnight program shall be included in the licensed capacity for crisis day services.

86528 CAPACITY DETERMINATION (Continued)**86528**

- (b) The number of children for whom the crisis nursery is licensed to provide care and supervision shall be determined on the basis of the application review by the Department, which shall take into consideration the following:
- (1) The fire clearance specified in Section 86520, Fire Clearance.
 - (2) The licensee's/administrator's ability to comply with applicable law and regulation.
 - (3) Physical features of the crisis nursery, including available living space, which are necessary in order to comply with regulations.
 - (4) Number of available staff to meet the care and supervision needs of the children.
 - (5) Any restrictions pertaining to the crisis nursery.
- (c) The Department shall be authorized to issue a license for fewer children than is requested based upon determinations made pursuant to Section 86528(b).
- (d) When the license is issued for fewer clients than requested, the licensee shall be notified in writing of the reasons for the limitation and of the licensee's rights to appeal the decision as specified in Section 86540, Denial of a License.
- (e) The Department shall have the authority to decrease existing licensed capacity with the licensee's agreement, when there is a change in any of the factors specified in Section 86528(b).
- (1) If the licensee does not agree to the decrease in capacity, the Department shall have the authority to initiate revocation action as specified in Section 86542, Revocation or Suspension of a License.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, and 1531, Health and Safety Code.

86529 WITHDRAWAL OF AN APPLICATION**86529**

- (a) An applicant shall have the right to withdraw an application.
 - (1) Withdrawal of an application shall be in writing.

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- (A) Health and Safety Code Section 1553 provides in part:

"The withdrawal of an application...shall not, unless the state department consents in writing to such withdrawal, deprive the state department of its authority to institute or continue a proceeding against the applicant for the denial of the license...upon any ground provided by law or to enter an order denying the license...upon any such ground."

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- (2) The application fee in Section 86536(a) shall be forfeited.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1516, 1520, 1523.1, and 1553, Health and Safety Code.

86531 ISSUANCE OF A LICENSE**86531**

- (a) Within 90 days of the date that a completed application, as defined in Section 86501(c), has been received, the Department shall give written notice to the applicant of one of the following:
 - (1) The application has been approved.
 - (2) The application has been denied.
 - (A) The notice of denial shall include the information specified in Section 86540(b)(1).
- (b) The Department shall notify the applicant, in writing, of the issuance of the provisional license.
 - (1) Issuance of the license itself shall constitute written notification of approval.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1509, 1516, 1520, 1520.5, 1525, 1526, and 1553, Health and Safety Code.

86531.1 ISSUANCE OF A PROVISIONAL LICENSE**86531.1**

- (a) All crisis nursery license applicants who complete an application and meet regulatory and statutory requirements shall receive a provisional license for the first 12 months of operation. After eight months of operation, the Department shall conduct a comprehensive review of the crisis nursery for compliance with all applicable laws and regulations and shall assist the applicant to develop a plan of correction when necessary.
- (1) Before the first business day of the thirteenth month of operation, if the Department determines that the crisis nursery is in substantial compliance with licensing standards, the Department shall issue a permanent crisis nursery license, except as follows:
- (A) If the Department determines that the crisis nursery is in substantial compliance with licensing standards, the Department may extend the provisional license for up to an additional six months if the crisis nursery requires additional time to be in full compliance with licensing standards.
1. By no later than the first business day of the seventeenth month of operation, the Department shall conduct an additional review of a crisis nursery for which the provisional license is extended, to determine whether a permanent license should be issued.
- (b) A crisis nursery licensee with a permanent license may apply for a provisional license under the following conditions:
- (1) A temporary change in location of not more than six months due to unforeseen circumstances beyond the control of the licensee (i.e. flood, earthquake, etc).
- (A) The Department shall have the authority to authorize a temporary facility change following a Department review, a finding of substantial compliance with licensing standards, and the securing of an appropriate fire clearance.
- (c) If, during the provisional license period, the Department discovers any serious deficiencies, the Department shall have the authority to institute administrative action or civil proceedings, or refer the case for criminal prosecution. The Department may deny a crisis nursery license application at any time during the term of the provisional license to protect the health and safety of children.
- (d) If the Department denies the application, the crisis nursery shall cease operation immediately. Continued operation of the crisis nursery after the Department denies the application or after the provisional license expires shall constitute unlicensed operation.
- (e) A provisional license shall not be renewable and shall terminate on the date specified on the license or upon denial of the application, whichever is earlier.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, 1520, 1524, 1525.5, and 1531, Health and Safety Code.

86531.2 ISSUANCE OF A PERMANENT LICENSE**86531.2**

- (a) Before the first business day of the thirteenth month (up to nineteen months, if an extension was granted in accordance with Section 86531.1(a)(1)(A)) after the effective date of the provisional license, pursuant to Section 86531.1, Issuance of a Provisional License, the Department shall give written notice to the crisis nursery applicant of one of the following:
- (1) A permanent license has been approved.
 - (2) A permanent license has been denied.
 - (A) The notice of denial shall include the information specified in Section 86540(b)(1).

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1509, 1516, 1520, 1520.5, 1525, 1525.5, and 1526, Health and Safety Code.

86534 SUBMISSION OF A NEW APPLICATION**86534**

- (a) A licensee shall file a new application as required by Section 86518, Application for a License, whenever there is a change in conditions or limitations described on the current license, or other changes including, but not limited to, the following:
- (1) Any change in the location of the crisis nursery.
 - (2) Any change of licensee, including but not limited to the following:
 - (A) Separating from a parent corporation.
 - (B) Merger with another corporation.
 - (3) Any change in facility category.
 - (4) Any increase in capacity.
 - (5) A permanent change in any child in care from ambulatory to nonambulatory status.
- (b) A new application as required by Section 86518, Application for a License, shall be filed whenever an applicant fails to complete a new application within the time limit required by Section 86527(a), if the applicant chooses to continue the application process.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1520, 1523.1, and 1531, Health and Safety Code.

**86535 CONDITIONS FOR FORFEITURE OF A CRISIS NURSERY
LICENSE****86535**

(a) Conditions for forfeiture of a crisis nursery license may be found in Health and Safety Code Section 1524.

- (1) "Licensee abandons the crisis nursery" shall mean the licensee informs the Department that the licensee no longer accepts responsibility for the crisis nursery, or the Department is unable to determine the licensee's whereabouts after making at least one (1) phone call per day, to the licensee's last telephone number of record, for five (5) consecutive workdays with no response; and sending a certified letter, requesting the licensee to contact the Department, to the licensee's last mailing address of record with no response within seven (7) calendar days.

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- (2) Health and Safety Code Section 1524 provides in part:

"A license shall be forfeited by operation of law prior to its expiration date when one of the following occurs:

- (a) The licensee sells or otherwise transfers the facility or facility property, except when change of ownership applies to transferring of stock when the facility is owned by a corporation, and when such transfer of stock does not constitute a majority change of ownership.
- (b) The licensee surrenders the license to the department.
- (c) The licensee moves a facility from one location to another....
- (f) The licensee abandons the facility...."

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NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1516, 1524, and 1524(e), Health and Safety Code.

86536 LICENSING FEES**86536**

- (a) The Department shall charge applicants and licensees fees in accordance with Health and Safety Code Section 1523.1.

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Health and Safety Code Section 1523.1 provides in part:

(a)(1) An application fee adjusted by facility and capacity shall be charged by the department for the issuance of a license. After initial licensure, a fee shall be charged by the department annually on each anniversary of the effective date of the license. The fees are for the purpose of financing the activities specified in this chapter. Fees shall be assessed as follows, subject to paragraph (2):

Fee Schedule			
Facility Type	Capacity	Initial Application	Annual
...			
Other Community Care Facilities	1-3	\$454	\$454
	4-6	\$908	\$454
	7-15	\$1,363	\$681

(2)(A) The Legislature finds that all revenues generated by fees for licenses computed under this section and used for the purposes for which they were imposed are not subject to Article XIII B of the California Constitution.

(B) The department, at least every five years, shall analyze initial application fees and annual fees issued by it to ensure the appropriate fee amounts are charged. The department shall recommend to the Legislature that fees established by the Legislature be adjusted as necessary to ensure that the amounts are appropriate.

(b) (1) In addition to fees set forth in subdivision (a), the department shall charge the following fees:

(A) A fee that represents 50 percent of an established application fee when an existing licensee moves the facility to a new physical address.

(B) A fee that represents 50 percent of the established application fee when a corporate licensee changes who has the authority to select a majority of the board of directors.

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(C) A fee of twenty-five dollars (\$25) when an existing licensee seeks to either increase or decrease the licensed capacity of the facility.

(D) An orientation fee of fifty dollars (\$50) for attendance by any individual at a department sponsored orientation session.

(E) A probation monitoring fee equal to the current annual fee, in addition to the current annual fee for that category and capacity for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(F) A late fee that represents an additional 50 percent of the established current annual fee when any licensee fails to pay the current annual licensing fee on or before the due date as indicated by postmark on the payment.

(G) A fee to cover any costs incurred by the department for processing payments including, but not limited to, bounced check charges, charges for credit and debit transactions, and postage due charges.

(H) A plan of correction fee of two hundred dollars (\$200) when any licensee does not implement a plan of correction on or prior to the date specified in the plan.

(2) Foster family homes shall be exempt from the fees imposed pursuant to this subdivision.

(3) Foster family agencies shall be annually assessed eighty-eight dollars (\$88) for each home certified by the agency.

(4) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a facility licensed under this chapter which serves six or fewer persons.

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86536**LICENSING FEES****86536**

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(c)(1) The revenues collected from licensing fees pursuant to this section shall be utilized by the department for the purpose of ensuring the health and safety of all individuals provided care and supervision by licensees and to support activities of the licensing program, including, but not limited to, monitoring facilities for compliance with licensing laws and regulations pursuant to this chapter, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the Budget Act in support of the licensing program. The department shall adjust the fees collected pursuant to this section as necessary to ensure that they do not exceed the costs described in this paragraph.

(2) The department shall not utilize any portion of these revenues sooner than 30 days after notification in writing of the purpose and use of this revenue, as approved by the Director of Finance, to the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the committee in each house that considers appropriations for each fiscal year. The department shall submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(d) A facility may use a bona fide business check to pay the license fee required under this section.

(e) The failure of an applicant or licensee to pay all applicable and accrued fees and civil penalties shall constitute grounds for denial or forfeiture of a license.

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(b) The application and annual fees shall be nonrefundable, except as provided in Government Code Section 13143.

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- (1) Government Code Section 13143 provides:

"Whenever any law which provides for fees or payments to a state agency does not authorize, as provided in this article, the refund of erroneous or excessive payments thereof, refunds may be made by the state agency which collected the fee or payment of any or all amounts received by the state agency in consequence of error, either of fact or of law, as to:

- (a) The proper amount of such fee or payment.
- (b) The necessity of making such payment or making or securing a permit, filing, examination, or inspection.
- (c) The sufficiency of the credentials of the applicant.
- (d) The eligibility of an applicant for any other reason."

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NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, 1523.1, and 1524, Health and Safety Code; and Section 13143, Government Code.

Article 4. ADMINISTRATIVE ACTIONS**86540 DENIAL OF A LICENSE****86540**

- (a) Except as specified in Section 86531.1, Issuance of a Provisional License, the Department shall deny an application for an initial license if it is determined that the applicant is not in compliance with applicable law and regulation.
- (1) The Department shall have the authority to deny an application for an initial license if the applicant has failed to pay any civil penalty assessments pursuant to Section 86558, Unlicensed Facility Penalties, or in accordance with a final judgment issued by a court of competent jurisdiction, unless payment arrangements acceptable to the Department have been made.
- (2) An application for licensure shall be denied as specified in Health and Safety Code Sections 1520.11(b), (d) and 1550.

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- (A) Health and Safety Code Section 1520.11(b) provides:

"The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, an executive director, or an officer, who is not eligible for licensure pursuant to Section 1520.3 or Section 1558.1."

- (B) Health and Safety Code Section 1520.11(d) provides:

"Prior to instituting administrative action pursuant to either subdivision (b) or (c), the department shall notify the applicant or licensee of the person's ineligibility to be a member of the board of directors, an executive director, or an officer of the applicant or licensee. The licensee shall remove the person from that position within 15 days or, if the person has client contact, he or she shall be removed immediately upon notification."

- (C) Health and Safety Code Section 1550 provides in part:

"The department may deny an application for, ... any license, ... upon any of the following grounds and in the manner provided in this chapter:

- (a) Violation by the licensee or holder of a special permit of this chapter or of the rules and regulations promulgated under this chapter.

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86540 DENIAL OF A LICENSE (Continued)**86540**

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- (b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations promulgated under this chapter.
- (c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or the people of the State of California.
- (d) The conviction of a licensee, or other person mentioned in Section 1522, at any time before or during licensure, of a crime as defined in Section 1522.
- (e) The licensee of any facility or the person providing direct care or supervision knowingly allows any child to have illegal drugs or alcohol.
- (f) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services."

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- (b) If the application for an initial license is denied, the Department shall mail the applicant a written notice of denial.
 - (1) The notice shall inform the applicant of and set forth the reasons for the denial, and shall advise the applicant of the right to appeal.
- (c) If the application for an initial license is denied, the application processing fee shall be forfeited.
- (d) An applicant shall have the right to appeal the denial of the application pursuant to Health and Safety Code Section 1526.

86540 DENIAL OF A LICENSE (Continued)**86540**

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- (1) Health and Safety Code Section 1526 provides in part:

"Immediately upon the denial of any application for a license ... the state department shall notify the applicant in writing. Within 15 days after the state department mails the notice, the applicant may present his/her written petition for a hearing to the state department. Upon receipt by the state department of the petition in proper form, such petition shall be set for hearing...."

- (2) Health and Safety Code Section 1551(a) provides in part:

"Proceedings for the ... denial of a license under this chapter shall be conducted in accordance with the provisions of Chapter 5 commencing with Section 11500 of Part 1 of Division 3 of Title 2 of the Government Code...."

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- (e) Notwithstanding any appeal action, the facility is unlicensed and shall not operate pending adoption by the director of a decision on the denial action.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1516, 1520, 1520.11, 1525, 1526, 1547, and 1548, Health and Safety Code.

86542**REVOCAION OR SUSPENSION OF A LICENSE****86542**

- (a) The Department shall have the authority to suspend or revoke a crisis nursery license on any of the grounds specified in Health and Safety Code Sections 1550 and 1550.5.

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- (1) Health and Safety Code Section 1550 provides in part:

"The department may ... suspend or revoke any license, ... upon any of the following grounds and in the manner provided in this chapter:

- (a) Violation by the licensee, or holder of a special permit of this chapter or of the rules and regulations promulgated under this chapter.
- (b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations promulgated under this chapter.
- (c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or the people of the State of California.
- (d) The conviction of a licensee, or other person mentioned in Section 1522, at any time before or during licensure, of a crime as defined in Section 1522.
- (e) The licensee of any facility or the person providing direct care or supervision knowingly allows any child to have illegal drugs or alcohol.
- (f) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services."

- (2) Health and Safety Code Section 1550.5 provides in part:

"The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is urgent to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety.

...

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86542 REVOCATION OR SUSPENSION OF A LICENSE (Continued)**86542**

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"Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for a full evidentiary hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of such notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits, unless it is earlier vacated by interim decision of the administrative law judge or a superior court judge. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed."

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- (b) Proceedings to hear a revocation action or a revocation and temporary suspension action shall be conducted pursuant to the provisions of Health and Safety Code Section 1551.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1551(a) provides in part:

"Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code...."

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- (c) For a revocation and temporary suspension action, the Director shall request the Office of Administrative Hearings to hold the hearing as soon as possible but not later than 30 calendar days after receipt of the notice of defense.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1516, 1550, 1550.5, and 1551, Health and Safety Code.

86544 INSPECTION AUTHORITY OF THE DEPARTMENT**86544**

- (a) The Department shall have the inspection authority specified in Health and Safety Code Sections 1526.5, 1533, 1534 and 1538.

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- (1) Health and Safety Code Section 1526.5(a) provides in part:

"Within 90 days after the date of issuance of a license or special permit pursuant to Section 1525, the Department shall conduct an inspection of the facility for which the license or special permit was issued...."

- (2) Health and Safety Code Section 1533 provides in part:

"...[A]ny duly authorized officer, employee, or agent of the State Department of Social Services 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, any provision of this chapter...."

- (3) Health and Safety Code Section 1534(a) provides in part:

"...Every licensed community care facility 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...."

- (4) Health and Safety Code Section 1538 provides in part:

"(a) Any person may request an inspection of any community care facility... in accordance with this chapter by transmitting to the state department notice of an alleged violation of applicable requirements prescribed by statutes or regulations of this state, including, but not limited to, a denial of access of any person authorized to enter the facility pursuant to Section 9701 of the Welfare and Institutions Code. 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 state department conducting the investigation or inspection pursuant to this chapter.

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86544**INSPECTION AUTHORITY OF THE DEPARTMENT
(Continued)****86544**

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"(c) Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a community care facility, the state department shall make a preliminary review and, unless the state department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection... within 10 days after receiving the complaint, except where a visit would adversely affect the licensing investigation or the investigation of other agencies. In either event, the complainant shall be promptly informed of the state department's proposed course of action.

"(d) Upon receipt of a complaint alleging denial of a statutory right of access to a community care facility..., the state department shall review the complaint. The complainant shall be notified promptly of the state department's proposed course of action...."

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(b) The Department shall have the authority to interview children or staff.

(1) The licensee shall make provisions for private interviews with any children or any staff member.

(c) The Department shall have the authority to observe the physical condition of the children, including conditions which could indicate abuse, neglect, or inappropriate placement, and to have a medical professional physically examine the child(ren).

(d) The Department shall have the authority to inspect, audit, and copy child or crisis 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 specified in Section 86566(c) and Section 86570(d).

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

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1516, 1526.5, 1531, 1533, 1534, and 1538, Health and Safety Code.

86545**EVALUATION VISITS****86545**

- (a) Crisis Nurseries shall be evaluated as specified in Health and Safety Code Section 1534.

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- (1) Health and Safety Code Section 1534(a) provides in part:

"(1) Every licensed community care facility 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....

"(2) The department shall notify the community care facility in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

"(3) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection ... in the county in which the facility is located."

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- (b) The Department shall have the authority to make any number of other visits to a crisis nursery in order to determine compliance with applicable law and regulation.
- (c) 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, any provision of Chapter 7.3.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1516, 1533, 1534, and 1538, Health and Safety Code.

86546 EXCLUSIONS**86546**

- (a) An individual can be prohibited from serving as a member of a board of directors, executive director, or officer; from being employed or allowing an individual in a crisis nursery as specified in Health and Safety Code Sections 1558 and 1558.1.

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- (1) Health and Safety Code Section 1558 provides in part:

"(a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

- (1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.
- (2) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.
- (3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1522.
- (4) Engaged in any other conduct that would constitute a basis for disciplining a licensee.
- (5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

"(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

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- "(c) (1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety...
- "(d) An excluded person who files a written appeal with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.
- "(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.
- "(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section. The department may enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or prohibiting the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.
- "(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1550.

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- "(h) (1) (A) In cases where the excluded person appealed the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.
- (B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.
- (2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.
- (B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order."

- (2) Health and Safety Code Section 1558.1 provides:

- "(a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

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- (2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.
- "(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:
- (1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.
- (2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.
- "(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

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- (1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.
- (2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

"(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1558 or any other law.

"(e) The department may determine not to exclude the person from, or remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances and conditions that either have been corrected or are no longer in existence."

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NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1516, 1558, and 1558.1, Health and Safety Code.

Article 5. ENFORCEMENT PROVISIONS**86552 DEFICIENCIES IN COMPLIANCE****86552**

- (a) When a licensing evaluation is conducted and the licensing program analyst determines that a deficiency exists, the licensing program analyst shall issue a notice of deficiency, unless the deficiency is not serious and is corrected during the visit.
- (b) Prior to completion of a visit, the administrator, or other person in charge of the crisis nursery, shall meet with the licensing program analyst to discuss any deficiencies noted, to jointly develop a plan for correcting each deficiency, and to acknowledge receipt of the notice of deficiency.
- (c) The licensing program analyst shall provide notice of deficiency to the licensee by one of the following:
 - (1) Personal delivery to the administrator at the completion of the visit.
 - (2) If the administrator is not at the crisis nursery site, the notice shall be given to the person in charge of the crisis nursery at the completion of the visit and mailed to the licensee.
 - (3) If the administrator or the person in charge of the crisis nursery refuses to accept the notice, a notation of the refusal shall be written on the notice and a copy left at the crisis nursery and mailed to the licensee.
- (d) The notice of deficiency shall be in writing and shall include the following:
 - (1) Citation of the statute or regulation which has been violated.
 - (2) A description of the nature of the deficiency that states the manner in which the licensee failed to comply with a specified statute or regulation and the particular place or area of the crisis nursery in which it occurred.
 - (3) The plan developed, as specified in Section 86552(b), for correcting each deficiency.
 - (4) A date by which each deficiency shall be corrected.
- (A) In determining the date for correcting a deficiency, the licensing program analyst shall consider the following factors:
 - 1. The potential hazard presented by the deficiency.

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DEFICIENCIES IN COMPLIANCE (Continued)

86552

2. The number of children affected.
 3. The availability of equipment or personnel necessary to correct the deficiency.
 4. The estimated time necessary for delivery, and for any installation, of necessary equipment.
- (B) The date for correcting a deficiency shall not be more than 30 calendar days following service of the notice of deficiency, unless the licensing program analyst determines that the deficiency cannot be completely corrected in 30 calendar days.
- (C) If the date for correcting the deficiency is more than 30 calendar days following service of the notice of deficiency, the notice shall specify the corrective actions which must be taken within 30 calendar days to begin correction.
- (D) The licensing program analyst shall require correction of the deficiency within 24 hours and shall specify on the notice the date by which the correction must be made whenever penalties are assessed pursuant to Section 86554(g).
- (5) The amount of penalty being assessed and the date the penalty begins.
- (6) The address and telephone number of the licensing office responsible for reviewing notices of deficiencies for the area in which the crisis nursery is located.
- (e) The following are examples of regulations that, if not complied with, nearly always result in a serious deficiency.
- (1) Section 86510 relating to limitations on capacity or ambulatory status of children in crisis nurseries.
 - (2) Section 86519 relating to criminal record clearance.
 - (3) Section 86520 relating to fire clearance.
 - (4) Section 86521 relating to water supply.
 - (5) Section 86572 relating to personal rights.
 - (7) Section 86575 relating to storing and dispensing medications.
 - (8) Section 86576 relating to food storage, preparation and service.
 - (9) Section 86587 relating to safety of child(ren) accommodations.

86552 DEFICIENCIES IN COMPLIANCE (Continued) 86552

(10) Section 86588 relating to hot water temperature, toilet facilities, storage, and disposal of solid wastes.

(11) Any other regulation, the violation of which is deemed by the Department to constitute a serious deficiency as defined in Section 86501(s)(1).

(f) Failure to operate according to the plan of operation, as specified in Section 86522, may result in a citation for a serious deficiency.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1507, 1531, 1534, and 1548, Health and Safety Code.

86553 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE 86553

(a) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.

(1) At a minimum, a follow-up visit shall be conducted within ten working days following the dates of corrections specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required.

(2) No penalty shall be assessed unless a follow-up visit is conducted.

(b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the licensing program analyst shall issue a notice of penalty.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1516, 1533, 1534, and 1548, Health and Safety Code.

86554 PENALTIES**86554**

- (a) A notice of penalty shall be in writing and include:
- (1) The amount of penalty assessed and the date payment is due.
 - (2) The name and address of the agency responsible for collecting the penalty.
- (b) A penalty of \$50 per day, per cited violation, shall be assessed for serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (c) Notwithstanding Section 86554(b), an immediate penalty of \$100 per cited violation per day for a maximum of five (5) days shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1522(b) has not obtained a California clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 86519(e) prior to working, residing, or volunteering in the crisis nursery.
- (1) Subsequent violations within a twelve (12) month period shall result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days.
 - (A) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1522.
 - (B) Progressive civil penalties specified in Sections 86554(e), (f) and (g) shall not apply.
- (d) Notwithstanding Section 86554(b), an immediate penalty of \$150 per day shall be assessed for any of the following:
- (1) A child's sickness, injury, or death has occurred as a result of the deficiency.
- (e) When a crisis nursery is cited for a deficiency and violates the same regulation subsection within a 12-month period, the crisis nursery shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (f) When a crisis nursery that was cited for a deficiency subject to the immediate penalty assessment in Section 86554(e), violates the same regulation subsection within a 12-month period of the last violation, the crisis nursery shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$150 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (1) For purposes of Sections 86554(e) and (f), a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number. An example of the same regulation subsections are Section 87218(a)(2) and (a)(5). Section 87218(a) and (b) are not the same regulatory subsection.

86554 PENALTIES (Continued)**86554**

- (g) If any deficiency is not corrected by the date specified in the notice of deficiency, a penalty shall be assessed for each day following that date until compliance has been demonstrated.
 - (1) Immediate penalty assessment as specified in Section 86554(e) and (f) shall begin on the day the deficiency is cited.
- (h) If a licensee or designated representative notifies the Department that a deficiency has been corrected, the penalty shall cease as of the day the Department receives notification that the correction was made.
 - (1) If the deficiency has not been corrected, civil penalties shall continue to accrue from the date of the original citation.
 - (2) If it can be verified that the correction was made prior to the date of notification, the penalty shall cease as of the earlier date.
- (i) If necessary, a site visit shall be made immediately or within five working days to confirm that the deficiency has been corrected.
- (j) When an immediate penalty has been assessed pursuant to this section and correction is made when the licensing program analyst is present, a follow-up visit is not required.
- (k) If an immediate civil penalty is assessed and the deficiency is corrected on the same day, the penalty shall still be assessed for that day.
- (l) Unless otherwise ordered by the Department all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated on the notice.
- (m) The Department shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in Section 86544(l).

NOTE: Authority Cited: Sections 1530 and 1548, Health and Safety Code. Reference: Sections 1516, 1522, 1534, and 1548, Health and Safety Code.

86555 ADMINISTRATIVE REVIEW**86555**

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

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1516 and 1534, Health and Safety Code.

86555.1 DENIAL OR REVOCATION OF A LICENSE FOR FAILURE TO PAY CIVIL PENALTIES**86555.1**

- (a) The licensee shall be responsible for paying civil penalties.
 - (1) Unless otherwise provided, the transfer, surrender, forfeiture or revocation of a license shall not affect the licensee's responsibility for paying any civil penalties accrued while the license was in effect.
- (b) The Department shall have the authority to deny or revoke any license for failure to pay civil penalty assessments.
 - (1) The Department shall have the authority to approve payment arrangements acceptable to the Department.
 - (2) The Department shall have the authority to approve the form of payment.
 - (3) The licensee's failure to pay civil penalty assessments pursuant to a payment plan approved by the Department may result in the denial or revocation of any license, and any other appropriate action.
- (c) Any denial or revocation of the license for failure to pay civil penalties may be appealed as provided by Health and Safety Code Section 1551.

NOTE: Authority Cited: Sections 1530 and 1548, Health and Safety Code. Reference: Sections 1516, 1522, 1534, 1548, and 1551, Health and Safety Code.

86558 UNLICENSED FACILITY PENALTIES**86558**

- (a) A penalty of \$200 per day shall be assessed for the operation of an unlicensed facility under either of the following conditions:
- (1) The operator has not submitted a completed application for licensure within 15 calendar days of issuance of the Notice of Operation in Violation of Law pursuant to Section 86506, Operation Without a License, and continues to operate.
 - (A) For purposes of this section, an application shall be deemed completed if it includes the information required in Section 86518, Application for a License.
 - (B) The completed application shall be deemed to be submitted when received by the Department.
 - (2) Unlicensed operation continues after denial of the initial application.
 - (A) Notwithstanding any appeal action, facility operation must cease within 10 calendar days of the mailing of the notice of denial or upon receipt of the denial notice by the operator, whichever occurs first.
- (b) The \$200 per day penalty shall be assessed for the continued operation of an unlicensed crisis nursery as follows:
- (1) On the 16th calendar day after the operator has been issued the Notice of Operation in Violation of Law and has not submitted a completed application as required.
 - (A) The \$200 per day penalty shall continue until the operator ceases operation or submits a completed application pursuant to Sections 86558(a)(1)(A) and (B).
 - (2) Within 10 calendar days of the mailing of the notice of denial or upon receipt of the denial notice by the operator, whichever occurs first.
 - (A) The \$200 per day penalty shall continue until the operator ceases operation.
- (c) If the unlicensed operator or designated representative reports to the Department that unlicensed operation, as defined in Health and Safety Code Section 1503.5, has ceased, the penalty shall cease as of the day the Department receives the notification.
- (1) A site visit shall be made immediately or within five working days to verify that the unlicensed crisis nursery operation has ceased.

86558 UNLICENSED FACILITY PENALTIES (Continued) 86558

- (2) Notwithstanding Section 86558(c), if the unlicensed crisis nursery operation has not ceased, penalties shall continue to accrue without interruption from the date of initial penalty assessment.
- (d) All penalties shall be due and payable upon receipt of the Notice for Payment from the Department, and shall be paid by check or money order made payable to the Department.
- (e) The Department shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in Section 86558(d).
- (f) Payment of civil penalties or application for licensure in response to a citation under this section do not permit the operation of a crisis nursery without a license.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1508(a) provides:

"No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a community care facility in this state, without a current valid license therefore as provided in this chapter."

HANDBOOK ENDS HERE

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1503.5, 1508, 1516, 1520, 1533, 1538, 1540, 1540.1, 1541, 1547, and 1549, Health and Safety Code.

86559 UNLICENSED FACILITY ADMINISTRATIVE APPEAL 86559

- (a) An unlicensed crisis nursery operator or designated representative shall have the right to appeal the penalty assessment within 10 working days after service of the penalty assessment.
 - (1) If the unlicensed crisis nursery operation has not ceased, the \$200 per day penalty shall continue to accrue during the appeal process.
- (b) The appeal review shall be conducted by Department management.
- (c) If the reviewer of the appeal determines that the penalty assessment was not issued in accordance with applicable statutes and regulations of the Department, the reviewer shall have the authority to amend or dismiss the penalty assessment.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 1503.5, 1508, 1516, 1547, and 1548, Health and Safety Code.

Article 6. CONTINUING REQUIREMENTS**86561 REPORTING REQUIREMENTS****86561**

- (a) The licensee shall report to the Department within the next business day during normal business hours (8 a.m. to 5 p.m.), and in writing within seven days, of the occurrence of any of the following incidents:
- (1) Death of any child in care from any cause, regardless of where the death occurred including in route to or from a hospital, or visiting away from the crisis nursery.
 - (A) The licensee shall obtain a certified copy of the child's death certificate as soon as it is available, maintain it in the child's file, and send a copy to the Department as soon as it is obtained.
 - (2) Any injury to any child that requires treatment by a medical professional.
 - (3) Any unusual incident or child absence which threatens the physical or emotional health or safety of any child.
 - (A) When reporting a child's absence, the report must include the following:
 1. When and how the child's absence was first noted.
 2. The child's last known activities.
 3. The circumstances surrounding the child's absence.
 4. Action was taken by crisis nursery personnel to locate the child.
 5. Whether law enforcement was involved, and if so, the extent of involvement.
 6. Documentation that the child's authorized representative or legal guardian has been notified of the incident.
 - (4) Any suspected physical or psychological abuse or neglect as defined in Penal Code Section 11165.6, of any child in care, in addition to reporting requirements pursuant to Penal Code Section 11166.
 - (5) A communicable disease outbreak when determined by the local health authority.

86561 REPORTING REQUIREMENTS (Continued)**86561**

- (6) Poisonings.
- (7) Fires or explosions that occur in or on the premises.
 - (A) Within 24 hours the licensee additionally shall report to the local fire authority, or in areas not having organized fire services, to the State Fire Marshal.
- (b) As soon as possible, but not later than the next business day, the licensee additionally shall report the incidents specified in Section 86561(a)(1) through (a)(7) that affect a child to that child's authorized representative.
- (c) The licensee shall include the following information on the written report:
 - (1) Child's name, age, sex, and date of admission.
 - (2) A detailed narrative of the incident and the events leading up to the incident, including the date, time, and location.
 - (3) Attending physician's name, findings, and treatment, if any.
 - (4) Disposition of the case, including the description of the crisis nursery plan for the child, in response to the incident.
 - (5) Analysis of the incident compared to other reportable incidents involving the same child, if any, and including the following information:
 - (A) Description of other incidents.
 - 1. Dates of previous incidents.
 - 2. Types of incidents.
 - 3. Action taken by crisis nursery personnel in response to incidents.
 - (B) The commonalities with other incidents involving the same child.
- (d) Within 10-working days following the occurrence, the licensee shall report to the Department the following changes:

86561 REPORTING REQUIREMENTS (Continued) 86561

- (1) The organizational changes specified in Section 86534(a)(2).
- (2) Any change in the licensee's mailing address.
- (3) Any change of the chief executive officer of a corporation or association, including the new chief executive officer's name and address.
- (4) A new member of the board of directors including the following information:
 - (A) Name and mailing address of the new member.
 - (B) Date he/she joined the board of directors.
- (5) Any change in the administrator, including the following information:
 - (A) Name, residence, and mailing addresses of the new administrator.
 - (B) Date position was assumed.
 - (C) Description of background and qualifications, including documentation of required education.
 1. Photocopied documentation shall be permitted.
- (6) Any changes in the plan of operation, specified in Section 86522(b) through (c), that affect the services to children.
 - (A) Before implementing any changes to the plan of operation, the licensee shall obtain written approval from the Department.
- (e) The licensees shall send to parents, legal guardians, board members of the crisis nursery, or child rights advocates, copies of substantiated complaints, in accordance with Health and Safety Code Section 1538.5(b).

86561 REPORTING REQUIREMENTS (Continued)**86561**

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1538.5(b) provides:

"The facility operator, at the expense of the facility, shall transmit a copy of all substantiated complaints, by certified mail, to those persons described pursuant to paragraph (1) of subdivision (a) in the following cases:

- (1) In the case of any substantiated complaint relating to resident physical or sexual abuse, the facility shall have three days, from the date the facility receives the licensing report from the state department to comply.
- (2) In any case in which a facility has received three or more substantiated complaints relating to the same violation during the past 12 months, the facility shall have five days from the date the facility receives the licensing report to comply."

- (2) Health and Safety Code Section 1538.5(c) provides:

"Each residential facility shall retain a copy of the notices transmitted pursuant to subdivision (b) and proof of their transmittal by certified mail for a period of one year after their transmittal."

HANDBOOK ENDS HERE

- (f) The licensee shall ensure that the child's authorized representative is notified no later than the next business day if the following circumstances have occurred without the authorized representative's participation:

- (1) The child has been placed in the crisis nursery under emergency circumstances.
- (2) The child has been removed from the crisis nursery.

- (g) The licensee shall ensure that the child's authorized representative is sent prior written notification regarding the need for non-emergency relocation of the child.

- (h) The licensee shall collect and maintain information on the LIC 9219 that includes the following information:

- (1) The total number of children placed in the program.