

Amend Section 89200 to read:

Article 1. GENERAL REQUIREMENTS, DEFINITIONS, AND FORMS

89200 GENERAL 89200

- (a) The caregiver shall ensure compliance with applicable laws and regulations.
- (b) ~~The provisions of Chapter 1, General Licensing Requirements, Chapter 1, shall not apply to Chapter 9.5, Foster Family Homes, Chapter 9.5.~~

Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1502, 1530, 1530.5 and 1531, Health and Safety Code.

Amend Section 89201 to read:

89201 DEFINITIONS

89201

The following definitions shall apply whenever the terms are used throughout this chapter.

- (a) (1) "Adult" means a person who is 18 ~~years of age or older~~ or over, except:
- (A) A "child" who is 18 or 19 as specified in the definition for "child" under subsection (c)(7), and
 - (B) A "child" who is 18-22 as specified in the definition for "child with special health care needs" under subsection (c)(10).
- (2) "Age-Appropriate" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity. Age appropriateness is based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for an age or age group.
- (3) "Alternative Caregiver" means a person who cares for a "child" in the caregiver's licensed or approved home when the caregiver is away for more than 24 hours at a time as specified in Section 89378, subsection (a)(1)(B).
- (24) "Applicant" means any adult who has ~~made application~~ applied for a foster family home license or to be an approved home.
- (35) "Approval Agency" means the child-placing agency that ~~has the responsibility to approve~~ is responsible for approving the homes of relative and nonrelative extended family members ~~as meeting that meet~~ the same standards ~~as those set forth~~ in Article 3 ~~of this chapter.~~
- (46) "Approved Home" means the home of a relative or nonrelative extended family member that is exempt from licensure and is approved as meeting the same standards as those set forth in Article 3 ~~of this chapter.~~
- (57) "Authorized Representative" means ~~any~~ the person or entity authorized by law to act on behalf of ~~any~~ a "child." ~~Such~~ The person or entity may include, but not be limited to, a ~~minor's~~ parent or attorney of a "child," Court Appointed Special Advocates (CASA), a legal guardian, a conservator, or a public placement agency.
- (b) (1) "Basic Rate" means the ~~rate charged by a home to provide basic services~~ amount of money that is paid to the licensed or approved caregiver for providing care and supervision of the Aid to Families with Dependent Children-Foster Care (AFDC-FC) "child" as specified in Welfare and Institutions Code section 11461. For SSI/SSP recipients, the basic rate means the established nonmedical out-of-home care rate which includes any exempt income allowance but does not include that amount allotted for the recipient's personal and incidental needs.

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Welfare and Institutions Code section 11461 provides in part:

- "(a) For children placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a relative or nonrelated legal guardian, or the approved home of a nonrelative extended family member as described in Section 362.7, the per child per month rates in the following schedule shall be in effect...
- (d) (1) (A) Beginning with the 1991-92 fiscal year, the schedule of basic rates in subdivision (a) shall be adjusted by the percentage changes in the California Necessities Index, computed pursuant to the methodology described in Section 11453, subject to the availability of funds.
- (e) (1) As used in this section, 'specialized care increment' means an approved amount paid with state participation on behalf of an AFDC-FC child requiring specialized care to a home listed in subdivision (a) in addition to the basic rate. On the effective date of this section, the department shall continue and maintain the current ratesetting system for specialized care.
- (f) (1) As used in this section, 'clothing allowance' means the amount paid with state participation in addition to the basic rate for the provision of additional clothing for an AFDC-FC child, including, but not limited to, an initial supply of clothing and school or other uniforms...
- (5) For the 2000-01 fiscal year and each fiscal year thereafter, without a county share of cost, notwithstanding subdivision (c) of Section 15200, each child shall be entitled to receive a supplemental clothing allowance of one hundred dollars (\$100) per year subject to the availability of funds. The clothing allowance shall be used to supplement, and not supplant, the clothing allowance specified in paragraph (1)."

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- ~~(2) "Basic Services" means those services required by applicable law and regulation to be provided by the licensee in order to obtain and maintain a community care facility license.~~
- (c) (1) "California Department of Justice Clearance" means ~~an individual~~ a person has no felony or misdemeanor convictions, other than a minor traffic violation, reported by the California Department of Justice.

- (2) "Capacity" means the ~~maximum~~ number of ~~persons authorized to be provided~~ "children" for whom the foster family home is licensed to provide care and supervision at any one time in any licensed facility.
- (3) "Care and Supervision" is defined in Welfare and Institutions Code section 11460, subsection (b) and means any one or more of the following activities provided by a caregiver to meet the needs of ~~the children:~~ a "child":
- (A) Assistance in dressing, grooming, bathing, and other personal hygiene.
 - (B) Central storage for or distribution of medicine, and ~~Assistance with taking medication~~ medicine, as specified in Section 89475, subsection (c).
 - ~~(C) Central storing and/or distribution of medications, as specified in Section 89475(e).~~
 - ~~(D)~~ Arrangement of and assistance with medical and dental care. This may include transportation.
 - ~~(E)~~ Maintenance of house rules for the protection of children.
 - ~~(F)~~ Supervision of children's schedules and activities.
 - ~~(G)~~ Maintenance and/or supervision of children's the child's cash resources or property where appropriate.
 - ~~(H)~~ Monitoring food intake or special diets.
 - ~~(I) Providing basic services as defined in Section 89201(b)(2).~~

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Welfare and Institutions Code section 11460, subsection (b) provides:

"Care and supervision' includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation."

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- (4) "Caregiver" ~~for the purpose of this chapter~~ means, the person who is licensed/ or approved individual having the to have authority and responsibility for the care and supervision of a "child" and operation of a the home.
- (5) "Caregiver's Family" means the caregiver's spouse, any relative, as defined in Section 89201(f)(1), or adopted children, or persons under guardianship or conservatorship of the caregiver, or the caregiver's spouse, who resides in the home.

- (6) "Cash Resources" means:
- (A) ~~Monetary~~ Gifts of money.
 - (B) Tax credits and/or refunds.
 - (C) Earnings from employment or workshops.
 - (D) Money for P~~ersonal~~ and incidental need allowances from ~~funding~~ sources of income including, but not limited to, SSI/SSP.
 - (E) Allowances paid to ~~children~~ a "child."

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The caregiver is not required to, but may decide to, give a "child" an allowance.

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- (F) Any other similar resources as ~~determined~~ decided by the licensing agency.
- (7) ~~"Child" means a person who is under 18 years of age or a person up to 19 years of age, who meets the requirements of Section 11403 of the Welfare and Institutions Code, who is being provided care and supervision in a foster family home, except where specified otherwise in this chapter.~~ placed with a caregiver in a licensed foster family home or approved home by a regional center, a parent or guardian, or a public child placement agency with or without a court order. "Child" also means a person who is:

- (A) 18 or 19, meets the requirements of Welfare and Institutions Code section 11403, and continues to be provided with care and supervision by the caregiver in the home; or
- (B) 18-22 as specified in the definition for "child with special health care needs" under subsection (c)(10) and continues to be provided with care and supervision by the caregiver in the home.

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- (A) Welfare and Institutions Code ~~S~~section 11403 provides:

"A child who is in foster care and receiving aid pursuant to this chapter and who is attending high school or the equivalent level of vocational or technical training on a full-time basis, or who is in the process of pursuing a high school equivalency certificate, prior to his or her 18th birthday, may continue to receive aid following his or her 18th birthday so long as the child continues to reside in foster care placement, remains otherwise eligible for AFDC-FC

payments, and continues to attend high school or the equivalent level of vocational or technical training on a full-time basis, or continues to pursue a high school equivalency certificate, and the child may reasonably be expected to complete the educational or training program or to receive a high school equivalency certificate, before his or her 19th birthday. Aid shall be provided ~~such~~ to an individual pursuant to this section provided both the individual and the agency responsible for the foster care placement have signed a mutual agreement, if the individual is capable of making an informed agreement, which documents the continued need for out-of-home placement."

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- (8) "Child Abuse Central Index" (CACI)" means the California Department of Justice maintained statewide, multi-jurisdictional, centralized index of child abuse investigation reports. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse ~~and~~ or severe neglect. Each child protection agency (police, sheriff, county welfare, and probation departments) is required by law to forward to the California Department of Justice a report of every child abuse incident it investigates, unless an incident is determined to be unfounded.
- (9) "Child Abuse Central Index (CACI) Clearance" means that the California Department of Justice has conducted a name search of the index and the search did not result in a match, or if there is a match the allegation(s) was not substantiated by the Department after independent review and investigation pursuant to Health and Safety Code Section 1522.1 of the Health and Safety Code.
- (10) "Child with Special Health Care Needs" means a ~~child who is~~ person under 18 years of age or a ~~person up to 22 years of age or~~ and younger, who meets the requirements of Welfare and Institutions Code Section 17710, subsection (a) of the Welfare and Institutions Code and all of the following conditions:
- (A) Has a medical condition that requires specialized in-home health care and
 - (B) Is one of the following:
 1. A child who has been adjudged a dependent of the court under Welfare and Institutions Code Section 300 of the Welfare and Institutions Code.
 2. A child who has not been adjudged a dependent of the court under Welfare and Institutions Code Section 300, of the Welfare and Institutions Code but who is in the custody of the county welfare department.
 3. A child with a developmental disability who is receiving services and case management from a regional center.

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(C) Welfare and Institutions Code ~~Section~~ 17710, subsection (a) provides:

" 'Child with special health care needs' means a child, or a person who is 22 years of age or younger who is completing a publicly funded education program, who has a condition that can rapidly deteriorate resulting in permanent injury or death or who has a medical condition that requires specialized in-home health care, and who either has been adjudged a dependent of the court pursuant to Section 300, has not been adjudged a dependent of the court pursuant to Section 300 but is in the custody of the county welfare department, or has a developmental disability and is receiving services and case management from a regional center."

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(11) "Completed Application" means:

- (A) The applicant has submitted and the licensing agency has received, all required information and materials that are required for a license, including an approved fire clearance, if applicable, from the local fire authority having jurisdiction, a CACI clearance, and a California criminal record clearance or exemption, or evidence of compliance with FBI requirements as specified in Section 1522(d)(1)(D) of the Health and Safety Code on the applicant and any other individuals specified in Section 89219. A completed application includes an approved fire clearance from the local fire authority, if a fire clearance for the home is required. It also includes a Child Abuse Central Index (CACI) clearance and a California criminal record clearance or exemption, or evidence of compliance with the FBI requirements specified in Health and Safety Code section 1522(d)(4)(D), for the applicant and any other person specified in Section 89219, Criminal Record Clearance.
- (B) The licensing agency has completed a site visit to the facility home.

(12) "Conservator" means a person appointed by the Superior Court pursuant to the provisions commencing with ~~Section 1800 of the Probate Code~~ section 1800 or ~~Section 5350 of the Welfare and Institutions Code~~ section 5350, to care for the person, or the estate, or the person and estate, of another.

(13) "Control of Property" means the legal right to enter, occupy, and maintain the operation of the home as verified by ~~documentation~~ documents that are provided to the Department or approval agency upon request of the Department; ~~Such documentation~~ documents may include:

- (A) a A Grant Deed showing ownership; ~~or~~
- (B) ~~the~~ A lease or rental agreement ~~or rental agreement;~~ ~~or~~

- (C) ~~a~~ A court order or similar document which shows ~~the~~ authority to control the property pending the outcome of a probate proceeding or an estate settlement,² or
 - (D) ~~a~~Any other documents that is acceptable to the Department, ~~(for example to include,~~ but not be limited to, utility bills, insurance statement, etc.)~~.~~
- (14) "Conviction" means:
- (A) A criminal conviction in California²; or
 - (B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.
- (15) "Criminal Record Clearance" means ~~an individual~~ a person has a California Department of Justice clearance and an FBI clearance or evidence of compliance with FBI requirements as specified in Health and Safety Code Section 1522, subsection (d)(14)(D) of the Health and Safety Code.
- (d) (1) "Deficiency" means any failure to comply with any provision of the Community Care Facilities Act ~~commencing~~ beginning with Health and Safety Code Section 1500 of the Health and Safety Code and/or regulations adopted by the Department pursuant to the Act.
- (2) "Department" is defined in Health and Safety Code Section 1502, subsection (b) of the Health and Safety Code as the State Department of Social Services.
- (3) "Director" is defined in Health and Safety Code Section 1502, subsection (c) of the Health and Safety Code as the Director of the State Department of Social Services.
- (4) "Disability" means a developmental, mental, or physical condition ~~that makes a child developmentally disabled, mentally disordered or physically handicapped, and for whom~~ for which a "child" requires special care and supervision is required as a result of his/her condition.
- (5) "Documented Alternative Plan (DAP)" means a written plan, ~~reviewed and approved by the licensing or approval worker~~ that the licensing or approval worker reviews and approves on a case-by-case basis as ~~a plan that is an alternative~~ another, but equally protective, manner of meeting way to meet the intent of ~~specified~~ a specific regulations in Article 3 ~~of this chapter.~~
- (e) (1) "Evaluator" means any person who is a duly authorized officer, employee, or agent of the Department, ~~including any officer, employee or agent of a county or other public agency authorized by the Department to license homes~~ county or other public agency, such as a Licensing Program Analyst (LPA), who makes licensing visits to a foster family home.

- (2) "Evidence of Caregiver's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary, or a letter from the attending physician or coroner's office verifying the caregiver's death.
- (3) "Exception" means a "child"-specific, nontransferable, written authorization issued by the licensing agency that approves an equally protective manner of complying with the intent of a specific regulation(s) ~~and which are~~ based on documentation of the unique needs or circumstances of a specific "child" placed in the home. ~~Exceptions are granted for a particular child and cannot be transferred or applied to other children or other homes or caregivers. Exception does not apply to Article 3 of this chapter.~~
- (4) "Exemption" means the granting of an exemption to the disqualification for a license, employment or presence in a home, as allowed under Health and Safety Code Section 1522, subsection (g) of the Health and Safety Code, for an individual person who does not have a criminal records clearance. ~~An exemption is not transferable, except as provided in Section 89219.1(g).~~

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~~(A)~~ Health and Safety Code Section 1522(g)(1) reads in part:

"After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for a license, special permit, or certificate of approval pursuant to subdivision (d), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c)..."

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- (f) (1) "Family Health Care" means health care which does not require the skills of qualified technical or professional health care personnel and is provided to a "child" by the foster parent in accordance with Section 89475, Health Related Services. ~~When these requirements are met, the family health care that may be provided includes, but is not limited to the following:~~
 - ~~(A) Routine administration of medications such as the administration of suppositories, ointments, lotions, pills, enemas or medications given by liquid medication dispenser, puffer, dropper or nebulizer.~~
 - ~~(B) Changing ostomy or indwelling urinary catheter bags.~~
 - ~~(C) Urine and blood glucose testing using a monitoring kit approved for home use.~~

- (D) ~~Heart and breathing apnea monitoring when it is simply the case of providing stimulation to the infant /child when the cardiac or respiratory rate falls below a specified rate and not a matter of interpreting a monitor pattern with the intervention based on that interpretation.~~
- (E) ~~Assistance with procedures self-administered by older children free of severe mental or physical disabilities such as insulin injection and oxygen administration.~~
- (F) ~~Assistance to children with other procedures such as injections where not otherwise prohibited by law.~~

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Family health care that may be provided includes, but is not limited to, the following:

- (A) Routine administration of medicine such as suppositories, ointments, lotions, pills, enemas, or medicine given by liquid medication dispenser, puffer, dropper, or nebulizer.
- (B) Changing ostomy or indwelling urinary catheter bags.
- (C) Urine and blood glucose testing using a monitoring kit approved for home use.
- (D) Heart and breathing apnea monitoring when only providing stimulation to the infant or child when the infant's or child's cardiac or respiratory rate falls below a specified rate. It is not interpreting a monitor pattern and making an intervention based on that interpretation.
- (E) Assistance with procedures self-administered by older children as appropriate to their age, development, and disability, if any, such as insulin injection and oxygen administration.
- (F) Assistance to children with other procedures, such as injections, where not otherwise prohibited by law.

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- (2) "Federal Bureau of Investigation (FBI) Clearance" means ~~an individual person~~ has no felony or misdemeanor convictions, other than a minor traffic violation, reported by the FBI.
- (3) "Foster Family Home (FFH)" means ~~any the home owned, leased, or rented by the caregiver(s) as their residence and where the caregiver(s), in their own home, is licensed or approved to provides 24-hour care and supervision for six or fewer foster children and the caregiver has control of the property as defined in Health and Safety Code section 1502, subsection (a)(5).~~ A foster family home may

provide sibling care for up to eight children provided the requirements of Health and Safety Code Section 1505.2 of the Health and Safety Code are met.

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Health and Safety Code section 1502(a)(5) provides:

" 'Foster family home' means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2."

~~(A)~~ Health and Safety Code Section 1505.2 provides:

"A licensing agency may authorize a foster family home to provide 24-hour care for up to eight foster children, for the purpose of placing siblings or half siblings together in foster care. This authorization may be granted only if all of the following conditions are met:

(A) The foster family is not a specialized foster care home as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code.

(B) The home is sufficient in size to accommodate the needs of all children in the home.

(C) For each child to be placed, the child's placement social worker has determined that the child's needs will be met and has documented that determination.

The licensing agency may authorize a foster family home to provide 24-hour care for more than eight children only if the foster family home specializes in the care of sibling groups, that placement is solely for the purpose of placing together one sibling group that exceeds eight children, and all of the above conditions are met."

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- (g) (1) "Gender Identity" means a person's internal identification or self-image as male or female.
- (42) "Guardian" means a person who is appointed by the Superior Court pursuant to the provisions commencing with Probate Code Section 1500 of the Probate Code or Welfare and Institutions Code Sections 360 or 366.26 of the Welfare and Institutions Code to care for the person, or the estate, or the person and estate, of another.
- (h) (1) "Health and Education Passport" means a summary of health and education information or records for a "child" that includes mental health information or records, as provided in Welfare and Institutions Code section 16010.

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Welfare and Institutions Code section 16010 provides in part:

"(a) When a child is placed in foster care, the case plan for each child recommended pursuant to Section 358.1 shall include a summary of the health and education information or records, including mental health information or records, of the child. The summary may be maintained in the form of a health and education passport, or a comparable format designed by the child protective agency. The health and education summary shall include, but not be limited to, the names and addresses of the child's health, dental, and education providers, the child's grade level performance, the child's school record, assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement, a record of the child's immunizations and allergies, the child's known medical problems, the child's current medications, past health problems and hospitalizations, a record of the child's relevant mental health history, the child's known mental health condition and medications, and any other relevant mental health, dental, health, and education information concerning the child determined to be appropriate by the Director of Social Services. If any other provision of law imposes more stringent information requirements, then that section shall prevail."

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- (42) "Health Care Professional" means a physician or ~~an individual person~~ who is licensed or certified under Business and Professions Code Division 2 ~~of the Business and Professions Code~~ to perform the necessary ~~client care procedures that is~~ prescribed by a physician. ~~Such~~ These health care professionals include the following: Registered Nurse, Public Health Nurse, Licensed Vocational Nurse, Psychiatric Technician, Physical Therapist, Occupational Therapist, and Respiratory Therapist.
- (23) "Home" means ~~for the purpose of this chapter~~ a Foster Family Home.
- (i) (1) "Inconclusive" means that although the allegation may have happened or is valid, there is not a preponderance of the evidence to prove that the alleged violation occurred.
- (42) "Independent Living Program (ILP)" means a program authorized under 42 USC ~~Section 677 of the Social Security Act~~ for services and activities to assist children ~~age 16 years~~ or older in foster care to make the transition from foster care to independent living.

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Examples of ILP services may include assistance with:

- (A) Obtaining a high school diploma,
- (B) Career exploration,

- (C) Vocational training,
- (D) Job placement and retention,
- (E) Daily living skills,
- (F) Budgeting and financial management skills,
- (G) Substance abuse prevention, and
- (H) Preventive health activities.

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- (23) "Individualized Health Care Plan" means the written plan developed by an individualized health care plan team and approved by the team physician, or other health care professional designated by the physician to serve on the team, for the provision of specialized in-home health care: to a "child with special health care needs." A hospital discharge plan may be used in place of the individualized health care plan as specified in Section 89569.1, subsection (c).
- (34) "Individualized Health Care Plan Team" means those ~~individuals~~ persons who develop an individualized health care plan for a "child with special health care needs;." These persons ~~which must~~ include the ~~child's~~ primary care physician for the "child" or other health care professional ~~designated~~ chosen by the physician to serve on the team, ~~any involved medical team,~~ the county social worker or regional center caseworker; for the "child," and any health care professional ~~designated~~ chosen to monitor the specialized in-home health care provided to the "child" pursuant to the ~~child's~~ individualized health care plan. ~~The individualized health care plan team may include, but shall not be limited to, a public health nurse, representatives from the California Children's Services Program or the Child Health and Disability Prevention Program, regional centers, the county mental health department and where reunification is the goal, the parent or parents, if available. In addition, the individualized health care plan team may also include the prospective specialized caregiver, but that caregiver shall not participate in any team determination required by Sections 89510.1(a)(1)(C) and 89565.1(a)(1)(B).~~

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The individualized health care plan team is convened by the county social worker or regional center social worker for a "child with special health care needs." This team may also include, but shall not be limited to, a public health nurse, representatives from the California Children's Services Program or the Child Health and Disability Prevention Program, regional centers, the county mental health department, the parent or parents of a "child" if they are available, and the prospective specialized caregiver.

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- (45) "Infant" means a child under ~~two years of age~~ 2.
- (j) (Reserved)
- (k) (Reserved)
- (l) (1) "Licensing Agency" means the ~~State~~ California Department of Social Services (CDSS) or any state, county or other public agency that is authorized by the Department to assume ~~specified~~ specific licensing responsibilities pursuant to Health and Safety Code Section 1511 of the Health and Safety Code.
- (2) "Licensed Home" means a home that is licensed by the California Department of Social Services (CDSS), Community Care Licensing or a county in accordance with the standards set forth in Article 3 of this chapter. ~~The license cannot be transferred to another person or location.~~
- (m) (1) "Medical Assessment" means a written medical evaluation by a health care professional which documents the health of a "child", including any possible medical problems.
- (~~1~~2) "Medical Conditions Requiring That Require Specialized In-Home Health Care" means provided that care may be safely and adequately administered health conditions that a "child" may have that a caregiver who has received training can care for safely when in the home:
- (A) ~~A dependency upon one or more of the following when, but for the fact that trained foster parents may provide these services under Section 17736 of the Welfare and Institutions Code, the skills of qualified technical or professional personnel would be required: Enteral feeding tube, total parenteral feeding, a cardiorespiratory monitor, intravenous therapy, a ventilator, oxygen support, urinary catheterization, renal dialysis, ministrations imposed by tracheostomy, colostomy, ileostomy, ileal conduit or other medical or surgical procedures or special medication regimens, including injection and intravenous medication; or~~
- (B) ~~Conditions such as AIDS, premature birth, congenital defects, severe seizure disorders, severe asthma, bronchopulmonary dysplasia, and severe gastroesophageal reflux when, because his/her condition could rapidly deteriorate causing permanent injury or death, the child requires in-home health care other than, or in addition to, family health care.~~

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These conditions may include:

- (A) Dependency upon one or more of the following: Enteral feeding tube, total parenteral feeding, a cardiorespiratory monitor, intravenous therapy, a

ventilator, oxygen support, urinary catheterization, kidney dialysis, care that is required by tracheostomy, colostomy, ileostomy, ileal conduit or other medical or surgical procedures; or special medication regimens, including injection and intravenous medicine; or

- (B) AIDS, premature birth, congenital defects, severe seizure disorders, severe asthma, bronchopulmonary dysplasia, and severe gastroesophageal reflux when, because his/her condition could rapidly deteriorate causing permanent injury or death, the child requires in-home health care other than, or in addition to, family health care.

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- (23) "Medical Professional" means a Health Care Professional as defined in subsection (h)(2).
- (n) (1) ~~"Needs and Services Plan" means a time-limited, goal-oriented written plan which identifies the specific needs of an individual child. This plan shall contain at a minimum the information required in Section 89370 and information on the background and needs of the child that the placing social worker deems necessary for the effective care of the child. This may include a social work assessment, medical reports, educational assessment, and identification of special needs when necessary.~~
- (21) "Nonrelative Extended Family Member (NREFM)" means any adult caregiver who has an established familial or mentoring relationship with the child pursuant as defined in Welfare and Institutions Code Section 362.7 of the Welfare and Institutions Code.

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- (A) Welfare and Institutions Code Section 362.7 provides:

~~"When the home of a nonrelative extended family member is being considered for placement of a child, the home shall be evaluated, and approval of that home shall be granted or denied, pursuant to the same standards set forth in the regulations for the licensing of foster family homes which prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver.~~

"... A 'nonrelative extended family member' is defined as any adult caregiver who has an established familial or mentoring relationship with the child. The county welfare department shall verify the existence of a relationship through interviews with the parent and child or with one or more third parties. The parties may include relatives of the child, teachers, medical professionals, clergy, neighbors, and family friends."

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(32) "Nonambulatory Person" means a person as defined in Health and Safety Code Section 13131 of the Health and Safety Code.

(A) A person who uses postural supports as specified in Section 8934725.2, subsection (a)(71); is nonambulatory.

(B) A person is not ~~deemed~~ considered nonambulatory solely because he / or she is deaf, blind, or prefers to use an mechanical aid for assistance.

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(C) Health and Safety Code ~~Section~~ 13131 provides:

"Nonambulatory persons' means persons unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. The determination of ambulatory or nonambulatory status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative in consultation with the Director of Developmental Services or his or her designated representative. The determination of ambulatory or nonambulatory status of all other disabled persons placed after January 1, 1984 who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative."

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(o) (1) ~~(Reserved)~~ "Occasional Short-Term Babysitter" means a person who cares for a "child" in or out of the caregiver's licensed or approved home on an occasional basis for no more than 24 hours at a time as specified in Section 89378, subsection (a)(1)(A).

(p) (1) Renumbered to Section 89201(r)(3)

(1) "Personal Property" means items that a "child" brings to or obtains while in foster care, such as clothes, gifts, and personal effects.

(2) "Physician" means a person who is licensed by the California Board of Medical Examiners or by the California Board of Osteopathic Examiners as a physician and or surgeon by the California Board of Medical Examiners or by the California Board of Osteopathic Examiners.

(3) "Postural Support" means appliances or devices that are used to achieve proper body position and balance for a "child," improve mobility and independent functioning for a "child," position a "child," or prevent a "child" from falling or injury as specified in Section 89475.2, Postural Supports and Protective Devices.

- (4) "Pre-Placement Questionnaire" means the set of questions specified in Section 89468, Admission Procedures and the Pre-Placement Questionnaire (LIC 9225).
- (35) "PRN Medication" (pro re nata) means any nonprescription or prescription medication ~~which~~ that is to be taken as needed.
- (6) "Protective Devices" means items that protect a "child" from getting hurt and are prescribed by a physician as specified in Section 89475.2, Postural Supports and Protective Devices.
- (47) "Provision" or "Provide" means whenever any regulation requires that provision be made for or that there be provided any service, personnel, or other requirement, the caregiver shall do so directly or present evidence to the licensing agency that the requirement has been met by some other means.
- (8) "Prudent Parent" or "Reasonable and Prudent Parent Standard" is defined in Welfare and Institutions Code section 362.04, subsection (a)(2) and as specified in Section 89377, Reasonable and Prudent Parent Standard.

HANDBOOK BEGINS HERE

Welfare and Institutions Code section 362.04, subsection (a)(2) provides:

"Reasonable and prudent parent" or "reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interest."

HANDBOOK ENDS HERE

- (q) (Reserved)
- (r) (1) "Rehabilitation" means that period of time, together with any education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service, which assist ~~an individual~~ person in reestablishing good character.
- (2) "Relative" means:
 - (A) A person related to ~~the~~ a "child" by birth or adoption within the fifth degree of kinship who, regardless of whether ~~the~~ a parent's rights to the "child" have been terminated or relinquished, is one of the following:
 - 1. Parent (mother, father) sibling (brother, sister), half-sibling (half-brother, half-sister), nephew, niece, uncle, aunt, first cousin, first cousin once removed, or ~~any such person of a preceeding~~ is in an earlier generation denoted by the prefixes grand, great, great-great, or great-great-great.

- (B) Stepfather, stepmother, stepbrother, or stepsister; or
 - (C) The spouse of any person named in (A) or (B) above, even ~~after~~ if the marriage has been terminated by death or dissolution.
- (p) (13) ~~"Physical Restraining Device" means any physical or mechanical device, material, or equipment item that is attached or adjacent next to a child's the body which of a "child" that the "child" cannot remove easily and which restricts keeps the "child's" from moving freely freedom of movement. Restraining devices include leg restraints, arm restraints, soft ties or vests, wheel chair safety bars, and full length bedrails as specified in Section 89475.2, Postural Supports and Protective Devices.~~
- (s) (1) "Self Administer" means the act of a "child" administering or giving him or herself medicine or injections as specified in Sections 89475.1, Emergency Medical Assistance, Injections, and Self-Administration of Medications and 89475, Health Related Services.
- (12) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health, or safety of any child in a home.
- (23) ~~"Sexual Orientation" means, for the purpose of in this chapter,~~ the identification of any ~~individual person~~ person as heterosexual, gay, lesbian, or bisexual.
- (4) "Shared Responsibility Plan" means a written plan that describes the duties, rights, and responsibilities of the teen parent and the caregiver with regard to the teen parent's child as defined in Welfare and Institutions Code section 16501.25 and specified in Section 89378, Responsibility for Providing Care and Supervision.

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Welfare and Institutions Code section 16501.25 provides in part:

"...(b)(1) When the child of a teen parent is not subject to the jurisdiction of the dependency court but is in the full or partial physical custody of the teen parent, a written shared responsibility plan shall be developed. The plan shall be developed between the teen parent, caregiver, and a representative of the county child welfare agency or probation department, and in the case of a certified home, a representative of the agency providing direct and immediate supervision to the caregiver. Additional input may be provided by any individuals identified by the teen parent, the other parent of the child, if appropriate, and other extended family members. The plan shall be developed as soon as is practicably possible. However, if one or more of the above stakeholders are not available to participate in the creation of the plan within the first 30 days of the teen parent's placement, the teen parent and caregiver may enter into a plan for the purposes of fulfilling the requirements of paragraph (2) of subdivision (d) of Section 11465, which may be modified at a later time when the other individuals become available.

(2) The plan shall be designed to preserve and strengthen the teen parent family unit, as described in Section 16002.5, to assist the teen parent in meeting the goals outlined in Section 16002.5, to facilitate a supportive home environment for the teen parent and the child, and to ultimately enable the teen parent to independently provide a safe, stable, and permanent home for the child. The plan shall in no way limit the teen parent's legal right to make decisions regarding the care, custody, and control of the child.

(3) The plan shall be written for the express purpose of aiding the teen parent and the caregiver to reach agreements aimed at reducing conflict and misunderstandings. The plan shall outline, with as much specificity as impracticable, the duties, rights, and responsibilities of both the teen parent and the caregiver with regard to the child, and identify supportive services to be offered to the teen parent by the caregiver or, in the case of a certified home, the agency providing direct and immediate supervision to the caregiver, or both. The plan shall be updated, as needed, to account for the changing needs of infants and toddlers, and in accordance with the teen parent's changing school, employment, or other outside responsibilities. The plan shall not conflict with the teen parent's case plan. Areas to be addressed by the plan include, but are not limited to, all of the following:

(A) Feeding.

(B) Clothing.

(C) Hygiene.

(D) Purchase of necessary items, including, but not limited to, safety items, food, clothing, and developmentally appropriate toys and books. This includes both one-time purchases and items needed on an ongoing basis.

(E) Health care.

(F) Transportation to health care appointments, child care, and school, as appropriate.

(G) Provision of child care and babysitting.

(H) Discipline.

(I) Sleeping arrangements.

(J) Visits among the child, his or her noncustodial parent, and other appropriate family members, including the responsibilities of the teen parent, the caregiver, and the foster family agency, as appropriate, for facilitating the visitation. The shared responsibility plan shall not conflict with the teen parent's case plan and any visitation orders made by the court."

(c) Upon completion of the shared responsibility plan and any subsequent updates to the plan, a copy shall be provided to the teen parent and his or her attorney, the

caregiver, the county child welfare agency or probation department and, in the case of a certified home, the agency providing direct and immediate supervision to the caregiver."

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(35) "Social Worker" means a person who ~~has a graduate degree from an accredited school of social work.:~~

(A) Has a graduate degree from an accredited school of social work, or

(B) Is employed by a public agency and designated by that agency as a social worker providing services to a "child" and his or her family.

(46) "Specialized Foster Family Home" means a licensed foster family home ~~which that~~ provides specialized in-home health care to ~~children~~ a "child" pursuant to Health and Safety Code Section 1507 of the Health and Safety Code and Welfare and Institutions Code Section 17710, subsection (i) of the Welfare and Institutions Code.

(57) "Specialized In-Home Health Care" means health care ~~as defined in Section 17710(h) of the Welfare and Institutions Code, other than family health care,~~ identified by the child's primary physician as appropriately administered in the home by a health care professional, ~~or by a foster parent caregiver, or any person~~ trained by health care professionals as defined in Welfare and Institutions Code section 17710, subsection (h).

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Welfare and Institutions Code section 17710 provides in part:

"...(h) "Specialized in-home health care" includes, but is not limited to, those services identified by the child's primary physician as appropriately administered in the home by any one of the following:

(1) A parent trained by health care professionals where the child is being placed in, or is currently in, a specialized foster care home...."

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(68) "SSI/SSP" means the Supplemental Security Income/State Supplemental Program, which is a federal/ or state government program that provides financial assistance to aged, blind, ~~and/or~~ disabled residents of California.

(9) "Substantiated" means that the allegation is valid because the preponderance of the evidence standard has been met.

(t) (1) "Transitional Independent Living Plan (TILP)" means the ~~portion of the child's case written~~ plan that describes ~~the~~ programs, ~~and~~ services, ~~including employment and~~

savings, as appropriate, based on an assessment of the individual child's skills and abilities, that will help the child and activities that the "child" is participating in to prepare for to make the transition from foster care to independent living.

- (u) (1) "Unfounded" means that the allegation is false, could not have happened, or is without a reasonable basis.
- (12) "Unlicensed Community Care Facility" means a facility as defined in Health and Safety Code Section 1503.5, subsection (a) and section 1505 of the ~~Health and Safety Code~~.
- (BA) A home which is "providing "care and supervision" as defined in ~~Section 89201~~ subsection (c)(32) includes, but is not limited to, one in which an unemancipated minor has been placed for temporary or permanent care.
- (CB) A home which is "held out as or represented as providing "care and supervision" includes, but is not limited to:
 - (1) A home which has been revoked or denied as follows:
 - a. a license, if licensed as a foster family home; or
 - b. an approval, if approved as a nonrelative extended family member home; or
 - c. a certificate, if certified by a Foster Family Agency as a foster home; and,
 - d. the ~~individual~~ person continues to provide care for the same or different clients with similar needs.
 - (2) A home where change of ownership has occurred and the same clients retained.
 - (3) A licensed home that moves to a new location.
 - ~~(4) A home which advertises as providing care and supervision.~~
- (DC) A home which "accepts or retains residents who demonstrate the need for care and supervision" includes, but is not limited to a home which houses unemancipated minors, even though the home is providing board and room only, or board only, or room only.

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- (A) Health and Safety Code Section 1503.5, subsection (a) provides in pertinent part:

"A facility shall be deemed to be an " 'unlicensed community care facility" ' and "maintained and operated to provide non-medical care" if it is unlicensed and not exempt from licensure and any one of the following conditions is satisfied:

- (1) The facility is providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (2) The facility is held out as or represented as providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (3) The facility accepts or retains residents who demonstrate the need for care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (4) The facility represents itself as a licensed community care facility.

Health and Safety Code section 1505 provides:

"This chapter does not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.

(l)(1) Any home of a relative caregiver of children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(2) Any home of a nonrelative extended family member, as described in Section 362.7 of the Welfare and Institutions Code, providing care to children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(m) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.

(n)(1) Any family home agency, family home, or family teaching home as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does any of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(B) As a family teaching home approved by a family home agency, provides 24-hour care for a maximum of three adults with developmental disabilities in independent residences, whether contiguous or attached, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(C) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(o) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(p) Any housing for elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C.A. Sec. 1701g), or Section 811 of Public Law 101-625 (42 U.S.C.A. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C.A. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C.A. Sec. 17151), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services. The project owner or operator may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(q) Any similar facility determined by the director."

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(v) (1) "Volunteer" means a person who provides ~~gratuitous, non-essential~~ unpaid support services to the home and does not replace required staff.

(w) (1) "Waiver" means a home-wide nontransferable written authorization issued by the licensing agency that approves an equally protective manner of complying with the intent of a specific regulation and which is based on a demonstration of the unique needs or circumstances of the home. ~~Waiver does not apply to Article 3 of this chapter.~~

(2) "Whole Family Foster Home (WFFH)" means a licensed or approved foster family home or certified family home where the caregiver provides care for a minor parent and the minor parent's child as defined in Welfare and Institutions Code section 11400, subsection (t).

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Welfare and Institutions Code section 11400, subsection (t) provides:

"Whole family foster home' means a new or existing family home, approved relative caregiver or nonrelative extended family member's home, the home of a nonrelated legal guardian whose guardianship was established pursuant to Section 366.26 or 360, certified family home that provides foster care for a minor parent and his or her child, and is specifically recruited and trained to assist the minor parent in developing the skills necessary to provide a safe, stable, and permanent home for his or her child. The child of the minor parent need not be the subject of a petition filed pursuant to Section 300 to qualify for placement in a whole family foster home."

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- (3) "Written Plan Identifying the Specific Needs and Services of the Child", formerly referred to as the "Needs and Services Plan", means a time-limited, goal-oriented written plan that identifies the specific needs of an individual "child". This plan shall contain information on the background and needs of a "child" that the placing social worker deems necessary for the effective care of the "child."

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This plan may include a social work assessment, medical reports, educational assessment, and identification of special needs when necessary.

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- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)

Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill 1695 (Chapter 653, Statutes of 2001).

Reference: California Fair Employment and Housing Act, Government Code Section 12921, 12926, and 12926.1(c); Section 51931(a), Education Code; Sections 1337, 1500, 1501, 1502, 1503, 1503.5, 1505, 1505.2, 1507, 1507.5, 1520, 1522, 1522.1, 1524, 1526, 1526.5, 1527, 1530, 1530.5, 1530.6, 1531, 1531.5, 1533, 1534, 1536.1, 1537, 1550, 1551, 1558, 1558.1, 1559.110, 1727(c), 11834.11, and 13131, Health and Safety Code; Unruh Civil Rights Act, Civil Code Section 51; Sections 309, 319(d), 361.2(j) - (j)(2), 362.04, 362.05, 362.7, 366.26, 11400(t), 11403, 11460, 11461, 16501.25, 16522, 17710, 17710(a), (g), (h) and (i), 17731, 17731(c) and 17736(a), Welfare and Institutions Code; 42 U.S.C.A. Section 1305 Sections 1337, 1500, 1501, 1502, 1503, 1503.5, 1505, 1505.2, 1507, 1507.5, 1520, 1522, 1522.1, 1524, 1524(e), 1526, 1526.5, 1527, 1530, 1530.5, 1530.6, 1531, 1531.5, 1533, 1534, 1536.1, 1537, 1550, 1551, 1558, 1558.1, 1559.110, 1727(c), 11834.11, and 13131, Health and Safety Code; Unruh Civil Rights Act, Civil Code Section 51; and California Fair Employment and Housing Act, Government Code Section 12921.

Amend Section 89202 to read:

89202 DEFINITIONS - FORMS

89202

The following forms, which are incorporated by reference, apply to the regulations in Title 22, Division 6, Chapter 9.5 (Foster Family Homes).

- (a) LIC 195 (10/07) – Notice of Operation in Violation of Law.
- (~~ab~~) LIC 198 (2/01) – Child Abuse Central Index Check for County Licensed Facilities.
- (~~bc~~) LIC 198A (~~3/99~~ 9/07) – Child Abuse Central Index Check for State Licensed Facilities.
- (d) LIC 283 (11/08) – Foster Family Home Application.
- (~~e~~) ~~LIC 508 (3/02) – Criminal Record Statement.~~
- (e) LIC 508D (12/07) – Out-Of-State Disclosure and Criminal Record Statement (Foster Family Homes, Small Family Homes, Certified Family Homes).
- (f) LIC 973 (4/03) – Documented Alternative Plan, Foster Family Homes (Bedrooms).
- (g) LIC 974 (4/03) – Documented Alternative Plan, Foster Family Homes (Telephones).
- (~~dh~~) LIC 9182 (~~4/02~~ 12/07) – Criminal Background Clearance Transfer Request.
- (~~ei~~) LIC 9188 (~~3/02~~ 12/07) – Criminal Record Exemption Transfer Request.
- (j) LIC 9225 (8/08) – Pre-Placement Questionnaire.
- (~~fk~~) PUB 396 (~~5/02~~ 4/07) – Foster Youth Rights ~~Poster~~

Authority cited: Section 1530, Health and Safety Code and Section 21 of the Assembly Bill 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1522 and 1522.1, Health and Safety Code; Section 16001.9, Welfare and Institutions Code.

Amend Section 89205 to read:

Article 2. ADMINISTRATIVE

89205 LICENSE REQUIRED

89205

Unless a home is exempt from licensure as specified in Section 89207, Exemption from Licensure, no ~~individual~~ person shall operate, establish, manage, conduct or maintain a foster family home, or hold out, advertise or represent by any means to do so, without first obtaining a current valid license from the licensing agency.

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1503, 1503.5, 1505, 1508, 1509, ~~1513~~, 1524, 1531, 1536.1, 1540, 1540.1, 1541, and 1547, Health and Safety Code.

Amend Section 89206 to read:

89206 OPERATION WITHOUT A LICENSE

89206

- (a) ~~An unlicensed facility as defined in Section 89201(u)(1) is in violation of Sections 1503.5 and/or 1508 of the Health and Safety Code unless exempted from licensure pursuant to Section 1505 of the Health and Safety Code or Section 89207 of this chapter.~~
- (b) ~~If the facility home is alleged to be in violation of Health and Safety Code Sections 1503.5 and/or 1508 of the Health and Safety Code, the licensing agency shall conduct a site visit, and/or an evaluation of the home pursuant to Health and Safety Code Section 1533 of the Health and Safety Code.~~

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Health and Safety Code section 1503.5 provides:

"(a) A facility shall be deemed to be an "unlicensed community care facility" and "maintained and operated to provide nonmedical care" if it is unlicensed and not exempt from licensure and any one of the following conditions is satisfied:

(1) The facility is providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(2) The facility is held out as or represented as providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(3) The facility accepts or retains residents who demonstrate the need for care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(4) The facility represents itself as a licensed community care facility.

(5) The facility is performing any of the functions of a foster family agency or holding itself out as a foster family agency.

(6) The facility is performing any of the functions of an adoption agency or holding itself out as performing any of the functions of an adoption agency as specified in paragraph (9) of subdivision (a) of Section 1502 or subdivision (b) of Section 8900.5 of the Family Code.

(b) No unlicensed community care facility, as defined in subdivision (a), shall operate in this state.

(c) Upon discovery of an unlicensed community care facility, the department shall refer residents to the appropriate local or state ombudsman, or placement, adult protective services, or child protective services agency if either of the following conditions exist:

(1) There is an immediate threat to the clients' health and safety.

(2) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license."

Health and Safety Code section 1508 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 therefor as provided in this chapter.

No person, firm, partnership, association, or corporation within the state and no state or local public agency shall provide specialized services within a community care facility in this state, without a current valid special permit therefore as provided in this chapter.

Except for a juvenile hall operated by a county, or a public recreation program, this section applies to community care facilities directly operated by a state or local public agency. Each community care facility operated by a state or local public agency shall comply with the standards established by the director for community care facilities.

As used in this chapter, 'local public agency' means a city, county, special district, school district, community college district, chartered city, or chartered city and county."

(4) Health and Safety Code §section 1533 provides in pertinent part:

"Except as otherwise provided in this section, any 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.

Foster family homes which are considered private residences for the purposes of Section 1530.5 shall not be subject to inspection by the department or its officers without advance notice, except in response to a complaint. The unannounced visits shall not constitute the annual evaluation visit required by Section 1534. Inspection visits to foster family homes shall be made during normal business hours, unless the serious nature of a complaint requires otherwise.

'Normal business hours,' as used in this section, means from 8 a.m. to 5 p.m., inclusive, of each day from Monday to Friday, inclusive, other than state holidays."

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(e) If the home is operating without a license, the licensing agency shall issue a Notice of Operation in Violation of Law (LIC 195) and shall refer the case for criminal prosecution and/or civil proceedings.

- (~~dc~~) The licensing agency shall issue an immediate civil penalty pursuant to as specified in Section 89255, Unlicensed Facility Penalties and Section 1547 of the Health and Safety Code.

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- (1) Section 1547 of the Health and Safety Code provides in part:

~~Notwithstanding any other provision of this chapter, any person who violates Section 1503.5 or 1508, or both, may be assessed by the department an immediate civil penalty in the amount of two hundred dollars (\$200) per day of violation.~~

~~The civil penalty ... shall be imposed if an unlicensed facility is operated and the operator refuses to seek licensure or the licensure application is denied and the operator continues to operate the unlicensed facility~~

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- (~~ed~~) Sections ~~89206~~ Subsections (eb) and (dc) shall may be applied pursuant to Health and Safety Code ~~Section 1549 of the Health and Safety Code~~.

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- (4) Health and Safety Code ~~Section 1549 of the Health and Safety Code~~ states provides:

" The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive and may be sought and employed in any combination deemed advisable by the department to enforce this chapter."

HANDBOOK ENDS HERE

- (~~fe~~) The licensing agency shall notify the appropriate placement or protective service agency if either of the following conditions exist:

- (1) There is an immediate threat to the ~~clients'~~ health and safety of children.
- (2) The unlicensed home does not submit an application for licensure to the licensing agency within 15 calendar days of being served a ~~n~~Notice of ~~o~~Operation in ~~v~~Violation of the Law (LIC 195).

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1503, 1503.5, 1505, 1508, ~~4524~~, 1531, 1533, 1536.1, 1538, 1540, 1540.1, 1541, ~~4547~~ and 1549, Health and Safety Code.

Amend Section 89207 to read:

89207 EXEMPTION FROM LICENSURE

89207

- (a) The provisions of this chapter shall not apply to those facilities and arrangements specified in Health and Safety Code Section 1505 of the ~~Health and Safety Code~~.

HANDBOOK BEGINS HERE

- (+) Health and Safety Code section 1505 ~~states~~ provides in ~~pertinent~~ part:

~~"This chapter does not apply to any of the following:~~

(a) ~~---~~ Any health facility, as defined by Section 1250 [sic 1200].

(b) ~~---~~ Any clinic, as defined by Section 1202.

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of such church or denomination.

(g) Any school dormitory or similar facility determined by the Department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the Director.

(i) Recovery houses or other similar facilities providing a group living arrangement for persons recovering from alcoholism or drug addiction which provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the

department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.

(l)(1) Any home of a relative caregiver of children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(2) Any home of a nonrelative extended family member, as described in Section 362.7 of the Welfare and Institutions code, providing care to children who are placed by a juvenile court, supervised by the county welfare or probations department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(m) ...

(n) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are place and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(o) ...

(p) Any similar facility determined by the director.

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(b) The provisions of this chapter shall not apply to any school dormitory or similar facility where all of the following conditions exist:

(1) The school is ~~certificated~~ certified or registered by the State Department of Education.

(2) The school and the school dormitory are on the same grounds.

(3) All children accepted by the school are ~~six years of age or older~~ 6 or over.

(4) The program operates only during normal school terms unless the academic program runs year-round.

(5) The school's function is educational only.

- (6) The school program is not designated as providing rehabilitative or treatment services.
 - (7) The school's function does not ~~promote-intent~~ intend to provide community care services, and the family does not accept children who are in need of such services, including but not limited to children with developmental disabilities, mental disorders or physical handicaps; juveniles declared dependents of the court under Welfare and Institutions Code §section 300; and juveniles declared wards of the court under Welfare and Institutions Code §sections 601 and 602.
 - (8) The facility does not receive any public funds designated for care including but not limited to AFDC-FC and SSI/SSP. The facility shall be permitted to receive public funds intended for educational programs.
 - (9) No public or private agency, including but not limited to county welfare departments and probation offices, provides social services to children in the facility.
- (c) The provisions of this chapter shall not apply to the following ~~additional~~ situations:
- (1) Any care and supervision of a persons from only one family by a close friend of the parent, guardian or conservator, provided that such arrangement is not for financial profit and does not exceed 10 hours per week.
 - (A) ~~Provision of~~ Providing longer hours of care shall not be precluded when care is provided for brief periods of time for reasons, ~~including that include,~~ but are not limited to, family emergencies, vacation, and military leave.
 - (2) Any family home that is exclusively used by a licensed or exempt Foster Family Agency and ~~issued~~ has a certificate of approval ~~by~~ from that agency.
 - (A) ~~Such families~~ The home shall not be required to obtain a license, but shall be in compliance with all other requirements ~~set forth~~ in this division. The home's compliance with these requirements shall be monitored through and assured by the Foster Family Agency. For the purposes of this section, an exclusive-use ~~facility~~ home shall mean a nonlicensed ~~residential facility~~ home that has been approved by a licensed Foster Family Agency as conforming to the regulations ~~pertaining to~~ for the Small Family Home Ccategory. A home ~~in the~~ exclusively used by ~~of~~ a licensed Foster Family Agency shall only accept ~~only those~~ a children placed by ~~that~~ the agency which approved the home.
 - (3) A home ~~which~~ that meets all of the following criteria:
 - (A) ~~a~~ Approved by a licensed adoption agency, or the Department, for the adoptive placement of a child; and
 - (B) ~~€~~ The child is legally free for adoption; and

- (C) ~~¶~~The agency or the Department is providing supervision of the ~~placement~~ home pending finalization of the adoption.
- (4) A home ~~which~~ that meets all of the following criteria:
- (A) ~~p~~Placement for adoption by a birth parent~~;~~ and
 - (B) ~~a~~A petition for adoption has been filed by the prospective adoptive parents, and is pending~~;~~ and
 - (C) ~~a~~A final decision on the petition has not been rendered by the court.
- (5) Any care and supervision of ~~persons~~ a "child" by a relative, guardian, or conservator. A relative, for purposes of this section, shall include ~~individuals~~ persons as specified in Health and Safety Code ~~S~~section 1505, subsection (k).

Authority cited: Sections 1530 and 1530.5, Health and Safety Code; Section 17730, Welfare and Institutions Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1503, 1503.5, 1505, ~~1505(k) and (l)~~, 1506, 1508, 1524, 1530, 1530.5, 1531, 1536.1, ~~1540~~, 1540.1, 1541, and 1547, Health and Safety Code; Sections 226.2, 226.5 and 226.6, Civil Code; and Sections 319(d), 362, 727, 16100, 17710(i), and 17736, ~~and 17736(b)~~; Welfare and Institutions Code.

- (a) The licensing agency shall have the authority to request review of the license.

Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1503, and 1531, Health and Safety Code.

Amend Section 89218 to read:

89218 APPLICATION FOR LICENSE

89218

- (a) The licensing agency shall have the authority to require any applicant ~~desiring to obtain a license to file, with the licensing agency,~~ a verified Foster Family Home aApplication (LIC 283) ~~on forms furnished by the licensing agency and to provide verification and/or documentation as requested by the licensing agency.~~
- (b) The applicant/caregiver shall cooperate with the licensing agency in providing verification and/or documentation as requested by the licensing agency.
- (c) ~~In addition to Tthe Foster Family Home aApplication (LIC 283), and~~ supporting documents shall contain the following:
- ~~(1) Name and home address of the applicant.~~
 - ~~(2) Name and address of the owner of the premises if the applicant is leasing or renting.~~
 - ~~(3) A copy of document(s) that establish that the applicant has control of the property to be licensed.~~
 - ~~(4) Maximum number of children to be served.~~
 - ~~(5) Age range, sex and the categories of children to be served, including but not limited to children with disabilities, if any.~~
 - ~~(6) Information that is required by Health and Safety Code Ssection 1520(d).~~
 - ~~(7) Information required by Section 1520(e) of the Health and Safety Code.~~

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Health and Safety Code section 1520 provides in part:

"Any person desiring issuance of a license for a community care facility or a special permit for specialized services under this chapter shall file with the department, pursuant to regulations, an application on forms furnished by the department, which shall include, but not be limited to:

"(a) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and of rules and regulations promulgated under this chapter by the department.

"(b) Evidence satisfactory to the department that the applicant is of reputable and responsible character. The evidence shall include, but not be limited to, a criminal

record clearance pursuant to Section 1522, employment history, and character references...

"(c) Evidence satisfactory to the department that the applicant has sufficient financial resources to maintain the standards of service required by regulations adopted pursuant to this chapter.

"(d) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer, or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in, any community care facility or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250).

"(e) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (d).

"(f) A signed statement that the person desiring issuance of a license or special permit has read and understood the community care facility licensure statute and regulations that pertain to the applicant's category of licensure.

"(g) Any other information that may be required by the department for the proper administration and enforcement of this chapter."

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- (84) Name, address and telephone number of the city or county fire department, or district providing fire protection services, or State Fire Marshal's Office having jurisdiction in the area where the home is located.
- (95) Fingerprint cards and ~~or~~ identifying information as specified in Section 89319, Criminal Record Clearance Requirement.
- (106) Information required by Health and Safety Code ~~Section 1522.1 of the Health and Safety Code.~~

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Health and Safety Code section 1522.1 provides:

"Prior to granting a license to, or otherwise approving, any individual to care for children, the department shall check the Child Abuse Central Index pursuant to paragraph (4) of subdivision (b) of Section 11170 of the Penal Code. The Department of Justice shall maintain and continually update an index of reports of child abuse by providers and shall inform the department of subsequent reports received from the child abuse index pursuant to Section 11170 of the Penal Code and the criminal history. The department shall investigate any reports received from the Child Abuse Central Index. The investigation shall include, but not be limited to, the

review of the investigation report and file prepared by the child protective agency which investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Central Index unless child abuse is substantiated."

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~~(11) Such other information as may be required pursuant to Section 1520(g) of the Health and Safety Code.~~

~~(12) A statement whether or not the caregiver will handle the children's money, personal property, and/or valuables.~~

89231(b)

(d) No caregiver shall alter or provide false or misleading information to obtain any foster family home license.

~~(de)~~ The ~~application~~ applicant shall be signed by the ~~applicant~~ application.

(ef) The application shall be filed with the licensing agency which ~~services~~ serves the geographical area ~~in which~~ where the home is located.

(fg) No application processing fee shall be charged to foster family homes.

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1503, 1503.5, 1508, 1520, 1520.3, 1521.5, 1522, 1522.1, 1523.1, 1524, 1525.25, 1525.3, ~~1530.91~~, 1531, ~~1531.4~~, 1536.1, 1540, 1540.1, 1541, and 1547, ~~and 1560~~, Health and Safety Code.

Amend Section 89219 to read:

89219 CRIMINAL RECORD CLEARANCE

89219

- (a) The licensing Department shall conduct a criminal record review of all ~~individuals~~ persons specified in Health and Safety Code ~~Section 1522, subsection~~ (b) and shall have the authority to approve or deny a foster family home license, or employment, residence, or presence in the home, based upon the results of such review.

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- (4) Health and Safety Code Section 1522(b) ~~of the Health and Safety Code~~ provides in part:

(1) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained or contracted by the licensee, and who has been certified or re-certified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who fall under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. Nothing in this paragraph restricts the right of the Department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

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- (b) The following persons are exempt from the requirement to submit fingerprints:

(1) A medical professional, as defined by the Department in regulations, who holds a valid license or certification from the ~~individual's~~ person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the caregiver, if all of the following apply:

(A) The criminal record of the ~~individual~~ person has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.

- (B) The ~~individual~~ person is providing time-limited specialized clinical care or services.
 - (C) The ~~individual~~ person is providing care or services within the ~~individual's~~ person's scope of practice.
 - (D) The ~~individual~~ person is not a foster family home caregiver or an employee of the home.
- (2) A third-party repair person, or similar retained contractor, if all of the following apply:
- (A) The ~~individual~~ person is hired for a defined, time-limited job.
 - (B) The ~~individual~~ person is not left alone with ~~foster a "children."~~ a "children."
 - (C) When ~~foster a "children" are~~ is present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract for a ~~foster "child"~~ "child" of the facility, and are in the home at the request of ~~that foster child's~~ the legal decision maker for a "child."
- (A) The exemption shall not apply to a person who is a foster home caregiver or an employee of the home.
- (4) Clergy and other spiritual caregivers who are performing services in common areas of the home, or who are advising an individual ~~foster "child"~~ "child" at the request of, or with the permission of, the ~~foster "child"~~ "child" or the ~~child's~~ child's legal decision maker for the "child."
- (A) This exemption shall not apply to a person who is a foster family home caregiver or an employee of the home.
- (5) Members of fraternal, service and similar organizations who conduct group activities for ~~foster youth, a "child,"~~ a "child," if all of the following apply:
- (A) Members are not left alone with ~~the foster a "children."~~ a "children."
 - (B) Members do not take ~~foster a "children"~~ a "children" from the home.
 - (C) The same group does not conduct such activities more often than once a month.
- (6) Adult friends and family of the caregiver who come into the home to visit, for a length of time no longer than one month, provided they are not left alone with ~~the a~~ a "children."

- (7) Parents of ~~a child's~~ friends of a "child" when the "child" is visiting the friend's home and the friend, caregiver or both are also present.
- (8) Occasional short-term babysitters.
- (89) Nothing in this paragraph shall prevent a caregiver from requiring a criminal record clearance of any individual person exempt from the requirements of this section, provided that the individual person has ~~foster child~~ contact with a "child."
- (c) Prior to the Department issuing a license or special permit to any individual or individuals to operate or manage a foster family home, the applicant and any adults residing in the home shall, unless exempt under ~~Section 89219~~ subsection (b), obtain a California criminal record clearance or exemption, and shall comply with FBI requirements as specified in Health and Safety Code Section 1522, subsection (d)(4)(D) ~~of the Health and Safety Code.~~
- (d) Prior to presence in the home, the ~~individuals~~ persons specified in subsection (a) shall, unless exempt under ~~89219~~ subsection (b), obtain a California criminal record clearance or exemption and shall comply with FBI requirements as specified in Health and Safety Code Section 1522, subsection (d)(4)(D) ~~of the Health and Safety Code.~~

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- (4) Health and Safety Code Section 1522(d)(4)(D) ~~of the Health and Safety Code~~ states:

~~An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.~~

"(D) To the extent required by federal law, an applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the

Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a)."

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- (e) Prior to employment, residence or initial presence in a foster family home, all ~~individuals~~ persons subject to criminal record review, in order to meet the requirements of ~~Section 89219 subsections~~ (c) and (d), shall be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions and arrests for any crime against a child, spousal cohabitant abuse, or for any crime for which the Department cannot grant an exemption. The declaration shall acknowledge and explain criminal convictions and arrests. The declaration shall also acknowledge that his/her continued employment, residence, or presence in the home is subject to approval of the Department.
- (1) A foster family home applicant/caregiver shall submit the fingerprints to the California Department of Justice along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation and shall comply with ~~Section 89219 subsection~~ (e), prior to the ~~individual's~~ person's employment, residence, or initial presence in the home.
- (A) Fingerprints shall be submitted to the California Department of Justice by the caregiver or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the Department.
- (B) A caregiver's failure to submit fingerprints to the California Department of Justice or to comply with ~~Section 89219 subsection~~ (e) shall result in the citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation.
1. The caregiver shall then submit the fingerprints to the California Department of Justice for processing.
- (C) The Department shall notify the caregiver of criminal records clearances and where there is not a clearance, the Department shall notify both the caregiver and the affected ~~individual~~ person associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (f) To continue to be employed, reside, or be present in a home, each ~~individual~~ person shall continue to meet the requirements of ~~Sections 89219 subsections~~ (c) and (d).
- (g) If the criminal record transcript of any of the ~~individuals~~ persons specified in Health and Safety Code ~~Section 1522, subsection~~ (b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than \$300, and an exemption pursuant to Section

89219.1, subsection (a) has not been granted, the Department shall take the following actions:

- (1) For initial applicants, denial of the application.
- (2) For current caregivers, the Department may institute an administrative action, including, but not limited to, revocation of the license.
- (3) For other ~~individuals~~ persons, exclusion of the affected individual pursuant to Health and Safety Code ~~§~~section 1558, and denial of the application or revocation of license, if the individual continues to provide service and/or reside in the home.

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- (4) Penal Code §section 243.4 ~~of the Penal Code~~ provides in part:

(A) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

(B) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

- (5) Penal Code §section 273a ~~of the Penal Code~~ provides:

(A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 3 or 4 years.

(B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

- (6) Penal Code §section 273(d) ~~of the Penal Code~~ provides:

Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4 or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.

- (7) Penal Code Section 368 ~~of the Penal Code~~ provides:

(A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

- (8) Health and Safety Code Section 1522(d) ~~of the Health and Safety Code~~ provides in part:

If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

- (9) Health and Safety Code Section 1522(e) ~~of the Health and Safety Code~~ provides in part:

The California Department of Social Services ~~shall~~ may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

- (h) A transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility may be requested by ~~an individual~~ person or a caregiver by providing the following documents to the Department:
- (1) A signed Criminal Background Clearance Transfer Request; (LIC 9182).
 - (2) A copy of the ~~individual's~~ person's valid identification, such as:
 - (A) California driver's license; or
 - (B) California identification card issued by the Department of Motor Vehicles; or
 - (C) Photo identification issued by another state or the United States government if the ~~individual~~ person is not a California resident.
 - (3) Any other documentation required by the Department (i.e., LIC 508D, Criminal Record Statement and job description).
- (i) The caregiver shall maintain documentation of criminal record clearances or criminal record exemptions of employees and volunteers that require fingerprinting and non-client adults residing in the home.
- (1) Documentation shall be available for inspection by the Department.

Authority cited: Sections 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Section 729, Business and Professions Code; Sections 1501.1, 1520, 1522, 1522(b)(3)(C), 1522.01, 1522.04, 1524, 1531, 1558, and 14564, Health and Safety Code; Sections 361.2(j) - (j)(1)(B) and 362.04, Welfare and Institutions Code; Section 8712, Family Code; 15376, Government Code; and Sections 136.1, 186.22, 187, 190 through 190.4 and 192(a), 203, 206, 207, 208, 209, 209.5, 210, 211, 212, 212.5, 213, 214, 215, 220, 243.4, 261(a), (a)(1), (2), (3), (4) or (6), 262(a)(1) or (4), 264.1, 266, 266c, 266h(b), 266i(b), 266j, 267, 269, 272, 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994], 273d, 285, 286, 288, 288a, 288.2, 288.5(a), 289, 290(a), 311.2(b), (c) or (d), 311.3, 311.10, 311.11, 314(1) or (2), 347(a), 368(b) or (c) if after January 1, 1999, 417(b), 451(a) or (b), 460(a), 186.22 and 518, 647.6 or prior to 1987 former Section 647a, 653f(c), 664/187, 667.5(c)(7), 667.5(c)(8) 667.5(c)(13), 12308, 12309 or 12310, 667.5(c)(14), 207, 208, 209, 209.5 and 210, 667.5(c)(22), 12022.53, Penal Code; and Section 42001, Vehicle Code.

Amend Section 89219.1 to read:

89219.1 CRIMINAL RECORD EXEMPTION

89219.1

- (a) After a review of the criminal record transcript, the Department may grant an exception from disqualification for a license, employment or presence in a home pursuant to Section 89219, subsection (g) if:
- (1) The applicant/caregiver requests an exemption for himself or herself, or
 - (2) The applicant/caregiver requests an exemption in writing for an ~~individual~~ person associated with the home, or
 - (3) The applicant/caregiver does not seek an exemption for the affected ~~individual person~~, the affected ~~individual person~~ may request an individual exemption in writing, if the conditions set forth in Health and Safety Code Section 1522, subsection (c)(5) of the Health and Safety Code are met; and

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- (A) Health and Safety Code Section 1522(c)(5) of the Health and Safety Code provides:

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

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- (4) The affected ~~individual person~~ presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment, presence, or residence in a licensed home.
- (b) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
- (1) The nature of the crime.
 - (2) Period of time since the crime was committed and number of offenses.
 - (3) Circumstances surrounding the commission of the crime that would demonstrate that repetition is not likely.

- (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
- (5) Granting by the Governor of a full and unconditional pardon.
- (6) Character references.
- (7) A certificate of rehabilitation from a superior court.
- (8) Evidence of honesty and truthfulness as revealed in exemption application documents and interviews.
 - (A) Documents include, but are not limited to:
 - 1. A Criminal Record Statement (LIC 508D, Criminal Record Statement); and
 - 2. The ~~individual's~~ person's written statement/explanation of the conviction and the circumstances surrounding the arrest.
- (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations between the ~~individual~~ person or others and the Department.
- (c) No exemption shall be granted for a crime that is listed in Health and Safety Code Section 1522, subsection (g) ~~of the Health and Safety Code~~.

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Health and Safety Code Section 1522(g) ~~of the Health and Safety Code~~ provides in part:

- (1) Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:
 - (A)(i) An offense in Section 220, 243.4, or 264.1, or subdivision (a) of Section 273a, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.
 - (ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7) or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certification of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

Health and Safety Code Section 1522(g)(1) lists or refers to convictions for crimes for which no exemptions are allowed. These crimes are identified below:

1. Penal Code Sections 186.22 and 136.1 – Gang related/Intimidation of witnesses or victims.
2. Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
3. Penal Code Section 203 – Any mayhem.
4. Penal Code Section 206 – Felony torture.
5. Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
6. Penal Code Sections 211, 212, 212.5, 213, 214 – Any robbery.
7. Penal Code Section 215 – Carjacking.
8. Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.
9. Penal Code Section 243.4 – Sexual battery.
10. Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.
11. Penal Code Section 262(a)(1) or (4) – Rape of a spouse.
12. Penal Code Section 264.1 – Rape in concert.
13. Penal Code Section 266 – Enticing a minor into prostitution.
14. Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
15. Penal Code Section 266h(b) – Pimping a minor.
16. Penal Code Section 266i(b) – Pandering a minor.
17. Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
18. Penal Code Section 267 – Abduction for prostitution.

19. Penal Code Section 269 – Aggravated assault of a child.
20. Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
21. Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
22. Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
23. Penal Code Section 285 – Incest.
24. Penal Code Section 286 – Sodomy.
25. Penal Code Section 288 – Lewd or lascivious act upon a child under 14.
26. Penal Code Section 288a – Oral copulation.
27. Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
28. Penal Code Section 288.5(a) – Continuous sexual abuse of a child.
29. Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.
30. Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.
31. Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.
32. Penal Code Section 311.3 – Sexual exploitation of a child.
33. Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.
34. Penal Code Section 311.10 – Advertising or distributing child pornography.
35. Penal Code Section 311.11 – Possessing child pornography.
36. Penal Code Sections 314(1) or (2) – Lewd or obscene exposure of private parts.
37. Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.

38. Penal Code Section 368(b) or (c) if after January 1, 1999 – Elder or dependent adult abuse.
39. Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.
40. Penal Code Section 451(a) or (b) – Arson.
41. Penal Code Section 460(a) – First degree burglary.
42. Penal Code Sections 186.22 and 518 – Gang related/Extortion.
43. Penal Code Section 647.6 or prior to 1987 former Section 647a – Annoy or molest a child under 18.
44. Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.
45. Penal Code Sections 664/187 – Any attempted murder.
46. Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.
47. Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
48. Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
49. Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.
50. Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.
51. Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

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- (d) The Department may deny an exemption request if:
- (1) The caregiver and/or the affected ~~individual~~ person fails to provide documents requested by the Department, or
 - (2) The caregiver and/or the affected ~~individual~~ person fails to cooperate with the Department in the exemption process.

- (e) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (f) The Department may grant a criminal record exemption that places conditions on the ~~individual's~~ person's continued licensure, and employment or presence in a licensed home.
- (g) ~~An individual~~ person shall be permitted to transfer a current criminal record exemption from one state-licensed facility to another provided the exemption has been processed through a state licensing regional office and the following are met:
 - (1) A signed Criminal ~~Background~~ Record Exemption Transfer Request; (LIC 9188).
 - (2) The request is in writing to the Department and includes:
 - (A) A copy of the ~~individual's~~ person's valid identification, such as:
 - 1. California driver's license; or
 - 2. California identification card issued by the Department of Motor Vehicles, or
 - 3. Photo identification issued by another state or the United States government if the ~~individual~~ person is not a California resident.
 - (B) Any other documentation required by the Department (i.e., LIC 508D, Criminal Record Statement and job description).
- (h) If the Department denies the ~~individual's~~ person's request to transfer a conditional criminal record exemption, the Department shall provide the individual with a right to an administrative hearing to contest the Department's decision.
- (i) The Department shall take the following actions if a criminal record exemption is not or cannot be granted:
 - (1) For initial applicants, denial of the application.
 - (2) For current caregivers, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current or prospective employees, exclusion of the affected ~~individual~~ person pursuant to Health and Safety Code ~~S~~section 1558, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the home.
 - (4) For ~~individuals~~ persons residing in the home, caregiver or employee, exclusion of the affected individual pursuant to Health and Safety Code ~~S~~section 1558, and denial of

the application or revocation of the licensee, if the individual continues to provide services and/or reside at the home.

Authority cited: Sections 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Section 729, Business and Professions Code; Sections 1520, 1522, 1522.01, 1522.04, 1524, 1531, and 14564, Health and Safety Code; Section 15376, Government Code; and Sections 136.1, 186.22, 187, 190 through 190.4 and 192(a), 203, 206, 207, 208, 209, 209.5, 210, 211, 212, 212.5, 213, 214, 215, 220, 243.4, 261(a), (a)(1), (2), (3), (4) or (6), 262(a)(1) or (4), 264.1, 266, 266c, 266h(b), 266i(b), 266j, 267, 269, 272, 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994], 273d, 285, 286, 288, 288a, 288.2, 288.5(a), 289, 290(a), 311.2(b), (c) or (d), 311.3, 311.10, 311.11, 314(1) or (2), 347(a), 368(b) or (c) if after January 1, 1999, 417(b), 451(a) or (b), 460(a), 186.22 and 518, 647.6 or prior to 1987 former Section 647a, 653f(c), 664/187, 667.5(c)(7), 667.5(c)(8) 667.5(c)(13), 12308, 12309 or 12310, 667.5(c)(14), 207, 208, 209, 209.5 and 210, 667.5(c)(22), 12022.53, Penal Code.

Amend Section 89219.2 to read:

89219.2 CHILD ABUSE CENTRAL INDEX

89219.2

- (a) Prior to the Department issuing a license or special permit for a foster family home, the Department shall conduct a Child Abuse Central Index (CACI) review pursuant to Health and Safety Code Section 1522.1 of the Health and Safety Code and Penal Code Section 11170, subsection (b)(3) of the Penal Code. The Department shall check the CACI for the applicant(s) and all ~~individuals~~ persons subject to a criminal record review, pursuant to Health and Safety Code Section 1522, subsection (d) of the Health and Safety Code and shall have the authority to approve or deny a home license, permit, certificate, employment, residence, or presence in the home based on the results of the review.
- (1) The applicant shall submit the Child Abuse Central Index ~~eCheck for State Licensed Facilities~~ Check for State Licensed Facilities (LIC 198A) for all ~~individuals~~ persons required to be checked directly to the California Department of Justice at the same time that the ~~individual's~~ person's fingerprints are submitted for a criminal background check as required by Section 89219, subsection (c).
- (A) ~~Individuals~~ Persons who have submitted the Child Abuse Central Index ~~eCheck for State Licensed Facilities~~ Check for State Licensed Facilities (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if the ~~individual~~ person can transfer their criminal record clearance or exemption pursuant to Section 89219, subsection (f).
- (2) The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license based upon a report from the CACI unless the Department substantiates the allegation of child abuse.
- (b) Subsequent to licensure, all ~~individuals~~ persons subject to a criminal record review, pursuant to Health and Safety Code Section 1522, subsection (b) of the Health and Safety Code, shall complete a Child Abuse Central Index ~~eCheck for State Licensed Facilities~~ Check for State Licensed Facilities (LIC 198A) prior to employment, residence, or initial presence in the home that cares for children.
- (1) The caregiver shall submit the Child Abuse Central Index ~~eCheck for State Licensed Facilities~~ Check for State Licensed Facilities (LIC 198A) directly to the California Department of Justice with the ~~individual's~~ person's fingerprints as required by Section 89219, subsection (d) prior to the ~~individual's~~ person's employment, residence or initial presence in the home.
- (A) ~~Individuals~~ Persons who have submitted the Child Abuse Central Index ~~eCheck for State Licensed Facilities~~ Check for State Licensed Facilities (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if the ~~individual~~ person can transfer their criminal record clearance or exemption pursuant to Section 89219, subsection (f) or Section 89219.1, subsection (c).

- (2) The Department shall check the CACI pursuant to Penal Code Section 11170, subsection (b)(3) of the Penal Code, 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.
- (c) ~~An individual~~ person shall be permitted to transfer a current CACI clearance from one state-licensed facility to another in the following manner:
- (1) If the initial CACI (LIC 198A) was submitted prior to January 01,1999, the ~~individual~~ person must submit a new CACI (LIC 198A) to be processed through a state licensing regional office; or
 - (2) If the CACI (LIC 198A) was submitted after January 01,1999 the ~~individual's~~ person's CACI clearance will be transferred along with the transfer of either the criminal record clearance or exemption in accordance with Sections 89219 or 89219.1.

Authority cited: Section 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1501.1, 1520, 1522, 1522.01, 1522.1, 1524, 1531, 1558, and 14564, Health and Safety Code; and Section 11170, Penal Code.

Amend Section 89224 to read:

89224 EXCEPTIONS AND WAIVERS AND EXCEPTIONS 89224

- (a) Unless prior written licensing agency approval is received as specified in subsection (ed) below, a caregiver shall maintain continuous compliance with the licensing regulations.
- (b) The licensing agency shall have the authority to ~~waive or~~ grant an exception or waiver to ~~for~~ a specific regulation(s) if the request:
 - (1) ~~d~~Demonstrates how the intent of the regulation(s) will be met; ~~and under the following circumstances:~~
 - (12) ~~Such waiver or exception shall in~~ Is not instance be detrimental to the health and safety of any child; ~~and~~
 - (23) Is submitted by ~~The~~ applicant or caregiver ~~shall submit~~ to the licensing agency as a written request for a waiver or exception, together with substantiating evidence supporting the request.
- (c) ~~(3)~~ No waiver or exception, pursuant to this section, shall be granted for any provision of Article 3, under this chapter.
- (ed) The caregiver shall retain the ~~Department's~~ licensing agency's written approval or denial of the exception or waiver request in on its facility file in the home.
- (e) A Documented Alternative Plan (LIC 973 and LIC 974), as defined in Section 89201, Definitions shall only be used for regulations specified in Article 3:
 - (1) Section 89387, Buildings and Grounds for bedrooms, and
 - (2) Section 89373, Telephones.

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1509, 1525.25 and 1531, Health and Safety Code; and Sections 361.2(j) - (j)(1)(C), Welfare and Institutions Code.

Amend Section 89226 to read:

89226 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY, AND VALUABLES 89226

(~~b~~a) The caregiver shall ~~maintain accurate records of accounts~~ make an itemized inventory list of cash resources, personal property, and valuables ~~entrusted to his/her care~~ that a "child" brings into care and review this list with the "child."

(1) This list shall be kept in the records for a "child" as specified in Section 89370, Children's Records.

(b) The caregiver shall safeguard the cash resources, personal property, and valuables of a "child" by:

(~~a~~) (1) Keeping the ~~C~~cash resources, and personal property, and valuables of each "child" shall be separate and intact, and

(2) Maintaining accurate records of the cash resources, personal property, and valuables belonging to a "child" and entrusted to the caregiver's care.

(c) The caregiver shall allow a "child" to have access to and control of his or her cash resources, personal property, and valuables in a manner that is age and developmentally appropriate.

(~~e~~d) When a "child" leaves ~~placement in~~ the home, the caregiver shall surrender ~~all of the child's~~ cash resources, personal property, and valuables that belong to the "child" to the ~~child's~~ authorized representative for the "child" as defined in Section 89201, subsection (a)(7), or to the "child" if age and developmentally appropriate, with an itemized inventory list of these items.

(1) The caregiver, a "child," and the authorized representative for the "child" shall inspect the itemized inventory list to ensure that all personal belongings of the "child" are being surrendered, and

(~~2~~) The caregiver shall ~~obtain~~ request and retain a receipt that is signed and dated by the authorized representative for a "child," the new caregiver, or a "child" if age and developmentally appropriate.

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1520, and 1531 ~~1558, and 1560~~, Health and Safety Code; and Sections 361.2(j) - (j)(2) and 44006.9 ~~16001.9~~, Welfare and Institutions Code.

Amend Section 89227 to read:

89227 APPLICATION REVIEW

89227

- (a) The licensing agency shall complete the following as part of the application review process:
- (1) Conduct a site visit to the proposed foster family home to:
 - (A) Determine that all of the requirements of Article 3 of this chapter have been met.
 - (B) Conduct interviews as specified in Health and Safety Code section 1521.5.
 - (2) Make a determination that the applicant has the ability to comply with the provisions of the Community Care Facilities Act and the regulations in this chapter as specified in Health and Safety Code section 1520.
 - (3) Make a determination that the home complies with the provisions of the Community Care Facilities Act and the regulations in this chapter.
 - (4) Make a determination that the applicant has secured a fire clearance from the State Fire Marshal, if required.

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- ~~(a) The licensing agency shall complete the following as part of the application review process:~~
- ~~(1) A site visit to the proposed foster family home and a determination that all of the requirements of Article 3 of this chapter have been satisfied, including but not limited to:~~
 - ~~(A) Review of the ability, willingness, and readiness of the prospective foster parent to meet the varying needs of children.~~

~~1. Health and Safety Code Ssection 1521.5 provides:~~

~~"(a) The county welfare director shall, prior to the issuance of any foster family home license, ensure that the county licensing staff, or the placement staff, conducts one or more in-home interviews with the prospective foster parent sufficient to collect information on caregiver qualifications that may be used by the placement agency to evaluate the ability, willingness, and readiness of the prospective foster parent to meet the varying needs of children. The inability of a prospective foster parent to meet the varying needs of children, shall not, in and of itself, preclude a prospective foster parent from obtaining a foster family home license. In counties in which the county~~

has not contracted with the state to license foster family homes, the in-home interview shall be done by the placement agency.

"(b) All in-home interviews required by this section shall be on an in-person basis.

"(c) If the in-home interview is conducted by the licensing agency, it shall be a part of the licensing record, and shall be shared with the placement agency pursuant to subdivision (e) of Section 1798.24 of the Civil Code.

"(d) The in-home interview required by this section shall be completed no later than 120 days following notification by the licensing agency.

"(e) No license shall be issued unless an in-home interview has been conducted as required by this section."

- ~~(B) A determination that the applicant has the ability to comply with the provisions of the Community Care Facilities Act and the regulations in this chapter as specified in Section 1520 of the Health and Safety Code.~~
- ~~(C) A determination that the applicant has secured a fire clearance from the State Fire Marshal, if required.~~
- ~~(D) A determination that the home complies with the provisions of the Community Care Facilities Act and the regulations in this chapter.~~

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- (b) If the applicant has not submitted all materials specified in Section 89218, Application for License, within 90 days of receipt of the application by the licensing agency, the licensing agency shall give written notice to the applicant that the application is incomplete.
 - (1) If the applicant does not complete the application within 30 days after such notice, the application shall be deemed withdrawn, provided that the licensing agency has not denied or taken action to deny the application.
 - (2) If the application has been deemed denied, the applicant shall file a new application as required by Section 89218, Application for License.
- (c) The licensing agency shall cease review of any application under the conditions specified in Health and Safety Code ~~Section 1520.3 of the Health and Safety Code~~.
 - (1) (Reserved)
 - (2) The circumstances and conditions in which the licensing agency may continue to review a previously denied application shall include, but are not limited to, the following:

- (A) A fire clearance previously denied, but now approved;
 - (B) A caregiver who did not meet the minimum qualifications, but now fulfills the qualifications; or
 - (C) A person with a criminal record, which was the basis for license denial, is no longer associated with the home.
- (3) This review shall not constitute approval of the application.
 - (4) 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 Section 1520.3 of the Health and Safety Code.

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- (4) Health and Safety Code ~~S~~section 1520.3 provides in part:

"(a)(1) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), or Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.3 (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 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.

"(2) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 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 the revocation.

"(3) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant was excluded from a facility licensed by the department pursuant to Sections 1558, 1568.092, 1569.58, or 1596.8897, the department shall cease any further review of the application unless the excluded individual has been reinstated pursuant to Section 11522 of the Government Code by the department.

"(b) If an application for a license or special permit indicates, 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.

"(2) In cases where the department informed the applicant of his or her right to petition for a hearing as specified in Section 1526 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.

"(c) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant 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 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.

"(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 that either have been corrected or are no longer in existence."

"(d) The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other law."

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Authority cited: Sections ~~1525, 1526~~, 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1520, 1520.3, 1521.5, 1521.6, 1523.1, ~~1524~~, 1525, 1526, 1531, 1550, and 1558.1, 13131, and 13143, Health and Safety Code; and Section 16518, Welfare and Institutions Code.

Amend Section 89228 to read:

89228 CAPACITY DETERMINATION

89228

- (a) The number of children for whom the ~~foster family~~ home is licensed to provide care and supervision shall be ~~determined~~ established on the basis of the application review by the licensing agency, ~~which shall take into consideration the following:~~
- (1) For licenses granted after January 1, 2010, this number shall not exceed six children, including a "child" and biological, adoptive, and guardianship children.
 - (A) For existing homes in which the number of children exceed six, including a "child," biological, adoptive, and guardianship children, no new placements shall be accepted until the number of children in the home does not exceed six, unless authorized by the licensing agency.
 - (2) If it is determined that the home can meet the needs of all children in the home, the licensing agency may grant a waiver or exception for the home to provide care to more than six children.
 - (3) Provided that all the conditions of Health and Safety Code section 1505.2 and the conditions for homes with a capacity of more than six children specified in Section 89420, subsection (b) are met, the licensing agency may authorize a home to care for up to eight children to accommodate a sibling group. A sibling group includes, but is not limited to, biological, step-siblings, and half-siblings.

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Health and Safety Code section 1505.2 provides:

"A licensing agency may authorize a foster family home to provide 24-hour care for up to eight foster children, for the purpose of placing siblings or half siblings together in foster care. This authorization may be granted only if all of the following conditions are met:

(A) The foster family home is not a specialized foster care home as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code.

(B) The home is sufficient in size to accommodate the needs of all children in the home.

(C) For each child to be placed, the child's placement social worker has determined that the child's needs will be met and has documented that determination.

The licensing agency may authorize a foster family home to provide 24-hour care for more than eight children only if the foster family home specializes in the care of

sibling groups, that placement is solely for the purpose of placing together one sibling group that exceeds eight children, and all of the above listed conditions are met."

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- (b) When determining the capacity of the home, the licensing agency shall take into consideration the following:
- (1) The caregiver's ability to comply with applicable laws and regulations.
 - (2) How many children, in addition to the children already living in the home, the caregiver is capable of providing care and supervision to and that the home can accommodate.
 - (23) Any other household members, including but not limited to, children under guardianship or conservatorship, who ~~reside at~~ already live in the home and their individual needs.
 - (34) Homes which accept a minor parent and his/ or her child(ren) shall have such child(ren) included in the home's licensed capacity.
 - (45) Physical features of the home, including available living space, which are necessary in order to comply with regulations.
- (bc) The licensing agency ~~shall be authorized to~~ may issue a license for fewer children than is requested when the licensing agency determines that the caregiver's responsibilities to other persons in the home, including persons under guardianship and conservatorship, would ~~preclude provision of~~ not allow the caregiver to provide the care and supervision required by these regulations.
- (ed) ~~When the licensing agency issues a license is issued for fewer children than requested by the applicant, the caregiver shall be notified~~ licensing agency shall notify the applicant in writing of the reasons for the limitation and of the ~~caregiver's~~ applicant's right to appeal the decision as specified in Section 89240, Denial of a License.
- (d) [Renumbered to Section 89410(d)]
- (e) The licensing agency ~~shall have the authority to~~ may decrease the existing licensed capacity of a foster family home, with the caregiver's agreement, when there is a change in any of the factors specified in subsection (b) above.
- (1) If the caregiver does not agree to the decrease in capacity, the licensing agency shall have the authority to initiate revocation action as specified in Section 89242, Revocation or Suspension of a License.
 - (2) If the licensing agency initiates revocation action, the caregiver has the right to request an administrative hearing.

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Section 361.2(j)(1)(A), ~~41465~~, Welfare and Institutions Code; and Sections 1501, 1501.1, 1502, 1505.2, 1507, 1520, ~~1515.15, 1526.5~~, 1526.75, ~~1529.1, 1529.2, 1529.3~~, 1531, 1531.2, 1533, 1534, 1538, and 1562, Health and Safety Code.

Amend Section 89229 to read:

89229 WITHDRAWAL OF APPLICATION

89229

- (a) An applicant shall have the right to withdraw, in writing, an application.
- (b) The Department must consent in writing to the withdrawal.

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(H) Health and Safety Code ~~S~~section 1553 provides in pertinent part:

The withdrawal of an application for a license or a special permit after it has been filed with the state department 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 or a special permit upon any ground provided by law or to enter an order denying the license or special permit upon any such ground.

HANDBOOK ENDS HERE

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes 2001).

Reference: Sections 1503, 1503.5, 1508, 1520, 1531, 1536.1, 1540, 1540.1, 1541, 1547, and 1553, Health and Safety Code.

Amend Section 89234 to read:

89234 CHANGES TO LICENSE

89234

- (a) Whenever there is a change in conditions or limitations described on the current license, ~~including a change in location~~, the caregiver shall submit a new application; to the licensing agency with updated information as required in Section 89218, Application for License.

~~HANDBOOK BEGINS HERE~~

- ~~(b) Changes commonly overlooked but which require that a new application be filed include:~~

~~(1) Any change in the location of the home.~~

~~(A) Prior notice of the move must allow for time to license the new home.~~

~~(B) A 30 day notice should provide adequate time for the licensing agency to license the home.~~

~~(C) If the licensing agency is not able to provide a site visit the first day the new home is occupied, when the licensing agency makes its site visit it may incorporate the placement worker's documentation to determine when the home first met core health and safety standards in accordance with Article 3 Licensing/Approval Standards.~~

~~(D) The physical license must be issued within 60 days of full licensing compliance.~~

~~(2) Any change in the home category.~~

~~(3) A permanent change in any child from ambulatory to nonambulatory status.~~

~~HANDBOOK ENDS HERE~~

- (b) Changes which require a new application to be filed include:

(1) Any change in the home licensing category.

(2) Any change that affects the capacity of the home.

(3) A permanent change in any "child" in the home from ambulatory to nonambulatory status.

- (c) A new application shall be submitted to the licensing agency within 30 days before or after there is a change in conditions that affect the license.

- (d) The caregiver shall provide the licensing agency with reasonable notice prior to any change in the location of the home as specified in Section 89361, subsection (d).

HANDBOOK BEGINS HERE

A reasonable notice of 30 days should provide adequate time for the licensing agency to license the home.

HANDBOOK ENDS HERE

Authority cited: Sections ~~1524~~, 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1520, 1525.25, and 1531, Health and Safety Code.

Amend Section 89235 to read:

89235 CONDITIONS FOR FORFEITURE OF A FOSTER FAMILY 89235
HOME LICENSE

- (a) Conditions for forfeiture of a ~~foster family home~~ license ~~may be found~~ are specified in Health and Safety Code Section 1524 of the Health and Safety Code.

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- (H) Health and Safety Code ~~S~~section 1524 provides in pertinent 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 of ownership.

"(b) The licensee surrenders the license to the department.

"(c) The licensee moves a facility from one location to another. The department shall develop regulations to ensure that such facilities are not charged a full licensing fee and do not have to complete the entire application process when applying for a license for the new location.

"(d) The licensee is convicted of an offense specified in Section 220, 243.4 or 264.1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.

"(e) The licensee dies. If an adult relative notifies the Department of his or her desire to continue operation of the facility and submits an application, the Department shall expedite the application. The Department shall promulgate regulations for expediting applications submitted pursuant to this subdivision.

"(f) The licensee abandons the facility."

HANDBOOK ENDS HERE

- (2b) ~~"The C~~caregiver abandons the home" ~~shall mean either of the following when:~~

- (A1) The caregiver informs the licensing agency that the caregiver no longer accepts responsibility for the home, or

(B~~2~~) The licensing agency is unable to determine the caregiver's whereabouts after the following the licensing agency has:

1.~~(A)~~ ~~The licensing agency requests~~ Requested information of the caregiver's whereabouts from an adult at the home if an adult can be contacted;~~2~~ and

2.~~(B)~~ ~~The licensing agency has m~~Made at least one phone call per day; to the caregiver's last telephone number of record; for five consecutive workdays with no response;~~2~~ and

3.~~(C)~~ ~~The licensing agency has s~~Sent a certified letter to the caregiver's last mailing address of record; requesting that the caregiver ~~to~~ contact the licensing agency; ~~to the caregiver's last mailing address of record~~ with no response within seven calendar days.

(b~~c~~) If the caregiver dies or abandons the home and a responsible adult with control of the property continues to operate the home, he or she shall file a new application, ~~with~~ and include evidence of the caregiver's death if applicable; ~~and~~ The responsible adult shall be subject to Section 89206, Operation Without A License if a new license is not obtained.

Authority cited: Sections 1524, ~~1524(e)~~, 1530, and 1530.5, ~~and~~ ~~1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1501.1, 1503, 1503.5, 1508, 1520, 1521.5, ~~1523~~, 1524, ~~1524(e)~~, and 1531, 1536.1, 1540, 1540.1, and 1547, Health and Safety Code.

Amend Section 89240 to read:

89240 DENIAL OF A LICENSE 89240

- (a) The licensing agency shall deny an application for a license if it is determined that the applicant is not in compliance with applicable laws and regulations.
- (1) The licensing agency shall have the authority to deny an application for a license if the applicant has failed to pay any civil penalty for unlicensed operations assessed pursuant to Section 89255, Unlicensed Facility Penalties, and in accordance with a final judgment issued by a court of competent jurisdiction, unless payment arrangements acceptable to the licensing agency have been made.
- (2) The Department may deny any license as specified in Health and Safety Code Section 1550 of the ~~Health and Safety Code~~.

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~~(A)~~ Health and Safety Code ~~Section~~ 1550 states:

"The department may deny an application for, or suspend or revoke, any license, or any administrator certificate, issued under this chapter 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."

HANDBOOK ENDS HERE

- (3) An application for a license shall not be denied solely on the basis that the applicant is a parent who has administered or will continue to administer corporal punishment; ~~that does not constituting~~ constitute child abuse as defined in Penal Code Sections 11165.6, 273a, and 273d subdivision (g) of the Penal Code, or Health and Safety Code Section 1531.5, subsection (c) of the Health and Safety Code, ~~on to his/ or her~~ own child(ren).

HANDBOOK BEGINS HERE

- ~~(A)~~ Penal Code Section 11165.6 of the Penal Code states provides:

"As used in this article, the term 'child abuse or neglect' means a physical injury which is inflicted by other than accidental means on a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. 'Child abuse or neglect' does not include a mutual affray between minors. 'Child abuse or neglect' does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer."

- ~~(B)~~ Penal Code Section 273(a) of the Penal Code provides in part:

"(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four or six years.

"(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor...."

- ~~(C)~~ Penal Code Section 273(d) of the Penal Code provides in part:

"(a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment in the state prison for two, four or six years, or in the county jail for not more than one year, by a fine of up to six thousand dollars (\$6,000), or by both that imprisonment and fine. . ."

(D) Health and Safety Code Section 1531.5(c) of the Health and Safety Code states provides:

"As used in this section, 'child abuse' means a situation in which a child suffers from any one or more of the following:

"(1) Serious physical injury inflicted upon the child by other than accidental means.

"(2) Harm by reason of intentional neglect or malnutrition or sexual abuse.

"(3) Going without necessary and basic physical care.

"(4) Willful mental injury, negligent treatment, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Director of Social Services.

"(5) Any condition which results in the violation of the rights or physical, mental, or moral welfare of a child or jeopardizes the child's present or future health, opportunity for normal development, or capacity for independence."

HANDBOOK ENDS HERE

- (b) If the application for a license is denied, the licensing agency shall mail the applicant a written notice of denial.
- (1) The notification shall inform the applicant of the denial, and set forth the reasons for the denial, and shall advise the applicant of the right to appeal.
- (c) An applicant shall have the right to appeal the denial of the application pursuant to Health and Safety Code Section 1526 of the Health and Safety Code and in accordance with Health and Safety Code Section 1551 of the Health and Safety Code.

HANDBOOK BEGINS HERE

(4) Health and Safety Code Section 1526 provides:

"Immediately upon the denial of any application for a license or for a special permit, 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. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the state department has all the powers granted therein."

HANDBOOK ENDS HERE

- (d) Proceedings to hear an appeal of a denial shall be conducted pursuant to Health and Safety Code Section 1551(a) ~~of the Health and Safety Code.~~

HANDBOOK BEGINS HERE

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

"Proceedings for the suspension, revocation, or denial of a license, registration, special permit, or any administrator certificate 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, and the state department shall have all the powers granted by those provisions. . ."

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- (e) Notwithstanding any appeal action, the ~~foster family~~ home that has been denied a license is unlicensed and shall not operate pending adoption ~~by the Director~~ of a decision on the denial action by the Director.

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1520, 1520.3, 1522, 1522.01, 1522.2, 1525, 1526, 1531, 1531.5, 1547, 1550, 1551, and 1558.1, Health and Safety Code; Sections 273a, 273(d), 11165, 11165.1, 11165.2, 11165.3, 11165.4, and 11165.6, Penal Code; and Sections 11500, et seq., Government Code.

Amend Section 89242 to read:

89242 REVOCATION OR SUSPENSION OF LICENSE

89242

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

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- (+) Health and Safety Code ~~Section 1550~~ specifies the following grounds:

"(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."

HANDBOOK ENDS HERE

- (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 of the Health and Safety Code~~.

HANDBOOK BEGINS HERE

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

"Proceedings for the suspension, revocation, or denial of a license, registration, special permit, or any administrator certificate 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, and the state department shall have all the powers granted by those provisions. . ."

- (2) Chapter 5, commencing with Government Code ~~Section~~ 11500 of Part 1, Division 3, Title 2 ~~of the Government Code~~ provides in part:
- (A) When the director intends to seek revocation of a license, he/she shall notify the licensee of the proposed action, by serving the licensee with an accusation, and shall advise the licensee of the right to a hearing.
 - (B) The licensee shall have the right to a hearing prior to the revocation or suspension of a license, except as provided in (1) below.
 - (1) The director shall have the authority to temporarily suspend any license prior to any hearing when in his/her opinion such action is necessary to protect the children in the foster family home from any physical or mental abuse or any other substantial threat to health or safety.
 - (2) When the director intends to temporarily suspend a license prior to a hearing, he/she shall notify the licensee of the temporary suspension and the effective date thereof, and shall concurrently serve the licensee with an accusation.
 - (C) The director shall, within 15 calendar days of receipt of notice of defense, request the Office of Administrative Hearings to set the matter for hearing.
 - (D) 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.

HANDBOOK ENDS HERE

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1522, 1522.01, 1522.2, 1531, ~~1533~~, 1534, ~~1538~~, 1550, and 1551, Health and Safety Code; and Sections 11500, et seq., Government Code.

Amend Section 89244 to read:

89244 INSPECTION AND EVALUATION AUTHORITY OF THE 89244
LICENSING AGENCY

- (a) The licensing agency shall have the ~~inspection~~ authority to inspect and evaluate the home as specified in Health and Safety Code Sections 1533, 1534, and 1538 ~~of the Health and Safety Code.~~

HANDBOOK BEGINS HERE

- (1) Health and Safety Code ~~S~~section 1533 provides in part:

"... any 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.

"Foster family homes which are considered private residences for the purposes of Section 1530.5 shall not be subject to inspection by the department or its officers without advance notice, except in response to a complaint. The unannounced visits shall not constitute the annual evaluation visit required by Section 1534. Inspection visits to foster family homes shall be made during normal business hours, unless the serious nature of a complaint requires otherwise.

"Normal business hours,' as used in this section, means from 8 a.m. to 5 p.m., inclusive, of each day from Monday to Friday, inclusive, other than state holidays."

- (2) Health and Safety Code ~~S~~section 1534(a) provides in part:

"(a)(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.

"(A) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

"(i) When a license is on probation.

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

"(iii) When an accusation against a licensee is pending.

"(iv) When a facility requires an annual visit as a condition of receiving federal financial participation.

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

"(B) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subparagraph (A)...

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

"(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."

(3) Health and Safety Code §section 1538 provides in part:

"(a) Any person may request an inspection of any community care facility or certified family home 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 or certified family home and foster family agency no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee or certified family home and foster family agency nor any copy of the complaint or any record published, released, or otherwise made available to the licensee or certified family home and foster family agency 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.

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

HANDBOOK ENDS HERE

- (b) The licensing agency shall have the authority to interview any ~~foster~~ "child," in a the foster family home, without prior consent.
 - (1) The caregiver shall make provisions for private interviews with any ~~foster~~ "child."
- (c) The licensing agency shall have the authority to inspect, audit, and copy ~~the children's or the foster family home's~~ records for a "child" or the home upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the requirements in Sections 89370, subsection (eb) and 89566, subsection (dc).
 - (1) The caregiver shall ~~make provisions~~ arrange for the ~~examination~~ review of all records relating to the operation of the foster family home.
- (d) The licensing agency shall have the authority to observe the physical condition of ~~the a~~ "child," including conditions which could indicate abuse, neglect, or inappropriate placement, and to have a licensed medical professional physically examine the "child."
- (e) The licensing agency shall have the authority to make additional visits to the home in order to determine compliance with applicable laws and regulations.

Authority cited: Section 1530, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, ~~1501.1~~, 1530.5, 1531, 1533, 1534 and 1538, Health and Safety Code.

Repeal Section 89245:

89245 EVALUATION VISITS

89245

- (a) ~~Every home shall be evaluated as specified in Sections 1533 and 1534 of the Health and Safety Code.~~

HANDBOOK BEGINS HERE

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

~~". . . any 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.~~

~~"Foster family homes which are considered private residences for the purpose of Section 1530.5 shall not be subject to inspection by the department or its officers without advance notice, except in response to a complaint. The unannounced visit shall not constitute the annual evaluation visit required by Section 1534. Inspection visits to foster family homes shall be made during normal business hours, unless the serious nature of a complaint requires otherwise.~~

~~"Normal business hours,' as used in this section, means from 8 a.m. to 5 p.m., inclusive, of each day from Monday to Friday, inclusive, other than state holidays."~~

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

~~"(a) (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.~~

~~"(A) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:~~

~~"(i) When a license is on probation.~~

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

~~"(iii) When an accusation against a licensee is pending.~~

~~"(iv) When a facility requires an annual visit as a condition of receiving federal financial participation.~~

~~"(v) In order to verify that a person who has been ordered out of a facility by the department is no longer at the facility.~~

~~"(B) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subparagraph (A)...~~

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

~~"(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."~~

HANDBOOK ENDS HERE

~~(b) The licensing agency shall have the authority to make any number of additional visits to a foster family home in order to determine compliance with applicable law and regulation.~~

Authority cited: Sections 1530, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1501.1, 1507.5, 1530.5, 1531, 1533, 1534 and 1538, Health and Safety Code.

Amend Section 89246 to read:

89246 EXCLUSIONS

89246

- (a) ~~An individual person~~ can be prohibited from being employed, allowed in, and to have contact with clients in a licensed home as specified in Health and Safety Code Section 1558 ~~of the Health and Safety Code.~~

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- (1) Health and Safety Code ~~S~~section 1558 states:

"(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 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.

"(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 which 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.

"(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.

"(2) If the department requires 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, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

"(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

"(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

"(B) Within 60 days of receipt of a notice of defense pursuant to Section 11506 of the Government Code by the excluded person to conduct a hearing on the accusation.

"(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

"(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, or 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 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.

"(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."

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Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1501.1, 1522, ~~1522.01~~, 1522.2, 1531, 1558, and 1558.1, ~~1569 et seq., and 1596.9 et seq.~~, Health and Safety Code; and Sections 11500 et seq., 11506, 11522, Government Code.

Amend Section 89252 to read:

89252 DEFICIENCIES IN COMPLIANCE

89252

- (a) When an ~~evaluator~~ licensing agency visits a home and determines that a deficiency exists, the ~~evaluator~~ licensing agency shall issue a notice of deficiency; unless the deficiency is not serious and is corrected during the visit.

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- (e) The following are examples of regulations which, if not complied with, nearly always result in a serious deficiency.
- (1) Section 89410 relating to limitations on the capacity or ambulatory status of children.
 - (2) Section 89510.1 relating to limitations on the capacity of specialized foster family homes.
 - (3) Section 89510.2 relating to dual licensure of specialized foster family homes.
 - (4) Section 89219 relating to criminal record clearance.
 - (5) Section 89420 relating to fire clearance.
 - (6) Section 89421 relating to water supply.
 - (7) Section 89565.1 relating to specialized in-home health care training and health screenings for staff in specialized foster family homes.
 - (8) Section 89372 relating to children's rights.
 - (9) Section 89373 relating to telephone service.
 - (10) Section 89475 relating to storing and dispensing medications.
 - (11) Section 89376 relating to food, preparation and service.
 - (12) Section 89387 relating to safety of children's accommodations.
 - (13) Section 89587.1 relating to safety of accommodations for children with special health care needs.
 - (14) Sections 89387, subsections (h) and (m) relating to ~~hot water temperature and~~ toilet facilities and hot water temperature.
 - (15) Section 89387, subsection (n) relating to storage and disposal of solid wastes.

- (16) Any other regulation, the violation of which is deemed by the licensing agency to constitute a serious deficiency as defined in Section 89201, subsection (s)(42).

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- (b) Prior to completion of a visit, the caregiver, or other person in charge of the home shall meet with the ~~evaluator~~ licensing agency 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 ~~evaluator~~ licensing agency shall provide a notice of deficiency to the caregiver by one of the following:
- (1) Personal delivery to the caregiver, at the completion of the visit.
 - (2) If the caregiver is not at the home, ~~leaving~~ the notice ~~with~~ shall be given to the person in charge, at the completion of the visit, ~~and~~
 - (A) ~~Under such circumstances, a copy of the notice shall also be~~ mailed to the caregiver.
 - (3) If the caregiver refuses to accept the notice or the notice cannot be completed during the visit, ~~mailing~~ the notice shall be mailed to the caregiver.
- (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 ~~stating~~ that states the manner in which the caregiver failed to comply with a specified statute or regulation, and the particular place or area of the home in which it occurred.
 - (3) The plan developed, as specified in subsection (b) above, for correcting each deficiency.
 - (4) A date by which each deficiency shall be corrected.
 - (A) In determining the date for correcting a deficiency, the ~~evaluator~~ licensing agency shall consider the following factors:
 1. The potential hazard presented by the deficiency.
 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 ~~evaluator~~ licensing agency 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 corrective actions which must be taken within 30 calendar days to begin correction.
 - (D) The ~~evaluator~~ licensing agency shall have the authority to require correction of a deficiency within 24 hours or less if there is an immediate threat to the health or safety of ~~the clients~~ children.
- (5) The address and telephone number of the licensing office responsible for reviewing notices of deficiencies for the area in which the home is located.
- (6) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.
- (e) If the caregiver disagrees with a citation or civil penalty assessed by the licensing agency, the caregiver has the right to appeal.
 - (1) The caregiver shall begin their appeal with the Licensing Program Manager listed on the licensing report, or county first level manager, in writing within 10 days from the date the caregiver receives the report or penalty assessment notice.
 - (2) If the caregiver disagrees with the decision made by the Licensing Program Manager or county first level manager, the second level of appeal shall be made to the Regional Manager or county second level manager. The appeal shall be made in writing after the caregiver receives the written decision from the Licensing Program Manager or county first level manager.
 - (3) If the caregiver disagrees with the decision made by the Regional Manager or county second level manager, the third level of appeal shall be made to the Program Administrator or county third level manager. The appeal shall be made in writing after the caregiver receives the written decision from the Regional Manager or county second level manager.
 - (4) If the caregiver disagrees with the decision made by the Program Administrator or county third level manager, the fourth level of appeal shall be made to the Deputy Director, Community Care Licensing Division, California Department of Social Services. The appeal shall be made in writing after the caregiver receives the written decision from the Program Administrator or county third level manager.

Authority cited: Sections 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; Section 17730, Welfare and Institutions Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1501.1, 1531, 1533, 1534, 1538, and 1553, Health and Safety Code; and Sections 17731 and 17732, Welfare and Institutions Code.

Amend Section 89254 to read:

89254 CIVIL PENALTIES

89254

- (a) ~~An immediate penalty of \$100 per violation shall be assessed for failure to submit fingerprints on any individual required to be fingerprinted under Health and Safety Code Section 1522 (b) prior to the person's employment, residence or presence in the facility.~~

The licensing agency shall assess civil penalties for the following deficiencies:

- (1) Not submitting an application for licensure required by Section 89218, Application for License, within 15 calendar days of being served a Notice of Operation in Violation of Law (LIC 195).
 - (2) Not obtaining the fingerprint clearances required for licensure by Health and Safety Code section 1522, subsection (b) as stated in Section 89219, Criminal Record Clearance. Civil penalties shall be assessed as specified in Health and Safety Code section 1522, subsection (c).
- (4b) ~~Progressive civil Repeat penalties specified for repeating the same violation as set forth in Health and Safety Code Section 1548, subsections (d) and (e) shall not apply.~~

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Health and Safety Code section 1522(b) provides in part:

(b)(1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility...

Health and Safety Code section 1522(c) provides in part:

(c)(1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550...

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(b)(c) Unless otherwise provided, all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated in the notice.

Authority cited: Sections 1522, 1530, and 1530.5 ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, ~~1501.1~~, 1522, 1531, 1533, 1534, 1538, and 1548, Health and Safety Code.

Amend Section 89255 to read:

89255 UNLICENSED FACILITY PENALTIES 89255

- (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 the Law (LIC 195) pursuant to ~~Section 87006~~, and continues to operate.
 - (A) For purposes of this section, an application shall be deemed completed if it includes the information required in Section 89218, Application for License.
 - (B) The completed application shall be deemed to be submitted when received by the licensing agency.
 - (2) Unlicensed operation continues after denial of the initial application.
 - (A) Notwithstanding any appeal action, home 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 facility as follows:
- (1) On the 16th calendar day after the operator has been issued the Notice of Operation in Violation of Law (LIC 195), 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 89255~~ subsections (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 his/her representative reports to the licensing agency that unlicensed operation, as defined in Health and Safety Code ~~Section 1503.5 of the Health and Safety Code~~ has ceased, the penalty shall cease as of the day the licensing agency receives the notification.
- (1) A site visit shall be made immediately or within five working days to verify that the unlicensed ~~home~~ facility operation has ceased.

- (2) Notwithstanding (c) above, if the unlicensed facility 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 licensing agency, and shall be paid by check or money order made payable to the agency indicated in the notice.
- (e) The licensing agency shall have the authority to file a claim in a court of competent jurisdiction to take other appropriate action for failure to pay penalties as specified in (d) above.
- (f) Payment of civil penalties or application for licensure in response to a citation under this section do not permit the operation of a community care home without a license.

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- ~~(f) Payment of civil penalties or application for licensure in response to a citation under this section do not permit the operation of a community care home without a license.~~
- ~~(4) Health and Safety Code Section 1508 of the ~~Health and Safety Code~~ provides in part:~~

~~"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."~~

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Authority cited: Sections ~~1524~~, 1530, and 1530.5, ~~and 1531~~, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, ~~1501.1~~, 1503, 1503.5, 1508, 1520, 1531, 1533, 1534, ~~1536.1~~, 1540, 1540.1, 1541, 1547 and 1549, Health and Safety Code.

Amend Section 89255.1 to read:

89255.1 DENIAL OR REVOCATION OF LICENSE FOR FAILURE TO PAY CIVIL PENALTIES 89255.1

- (a) The ~~licensee~~ caregiver 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~~ caregiver's responsibility for paying any civil penalties that 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~~ caregiver's failure to pay civil penalty assessments pursuant to a payment plan approved by the Department may result in the denial or revocation of any license, and/or any other appropriate action.
- (c) Any denial or revocation of the license for failure to pay civil penalties may be appealed as provided by Health and Safety Code ~~Section~~ Section 1551.

Authority cited: Sections ~~1522~~, 1530 and 1548, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1531, 1534, 1548, and 1551, Health and Safety Code.

Amend Section 89256 to read:

89256 UNLICENSED FACILITY ADMINISTRATIVE APPEAL 89256

- (a) An unlicensed facility operator or his/her representative shall have the right to appeal the penalty assessment to the licensing agency within 10 working days of the mailing of the penalty assessment.
 - (1) If ~~the unlicensed facility~~ 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 a higher level staff person at the licensing agency than the ~~evaluator~~ staff person at the licensing agency who issued the penalty.
- (c) If the ~~reviewer~~ of higher level staff person at the licensing agency who reviews the appeal determines that the penalty assessment was not issued in accordance with applicable statutes and regulations of the Department, he/ or she shall have the authority to amend or dismiss the penalty assessment.

Authority cited: Sections 1530, 1530.5, and 1547, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1503.5, 1508, 1531, 1536.1, 1540, 1541, 1541.1, and 1547, Health and Safety Code.

Repeal Section 89261:

89261 REPORTING PROCEDURES

89261

- (a) ~~Upon the occurrence, during the operation of the home, of any of the events specified in Section 89361 (a), a report shall be made to the licensing agency within the agency's next working day during its normal business hours. A written report containing the information specified in Section 89361(b), shall be submitted to the licensing agency within seven days following the occurrence of such event.~~

Authority cited: Sections 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, 1501.1, 1507, 1530.6, 1531, 1538, 1550.5, and 1557.5, Health and Safety Code.

Amend Section 89286 to read:

89286 ALTERATIONS TO EXISTING FOSTER FAMILY HOMES 89286

- (a) The licensing agency shall have the authority to require that the caregiver have a building inspection by a local building inspector if the agency suspects that a hazard to health and safety exists.

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- ~~(b) Prior to construction or alterations, state and local law requires that the caregiver shall secure a building permit.~~

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Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001).

Reference: Sections 1501, ~~1525.5~~, and 1531, Health and Safety Code.