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Regulation Package No. 0614-07

CDSS MANUAL LETTER NO. CCL-16-06

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

Regulation Package # 0614-07

Effective 4/1/16

Sections 102352, 102416.5, 102417, 102421

This manual letter has been posted on the Office of Regulations Development website at <http://www.cdss.ca.gov/ord/PG640.htm>.

In accordance with Assembly Bill 529 (Chapter 744, Statutes of 2003), these proposed regulations will strengthen the health and safety for children in licensed Family Child Care Homes by clarifying the document requirements and capacity levels, such as caring for more than six and up to eight children in a Small Family Child Care Home and more than 12 and up to 14 in a Large Family Child Care Home. The proposed regulations also clarify when an assistant provider is required to be present at a Family Child Care Home and specify landlord notification and documentation requirements for licensees that operate in rental properties.

This regulatory action will benefit licensees of Family Child Care Homes because it will clarify the documentation requirements related to caring for up to two additional children and to notifying the property owner/landlord, as well as clarify how capacity is determined and when an assistant provider is required to be present at a Family Child Care Home. This action will also benefit licensees and families of children in care at licensed Family Child Care Homes because this action will clarify what is required of a licensee when he/she seeks to care for up to two additional children.

In addition, this regulatory action will increase protection of health and safety in Family Child Care Homes. It will help the Department staff tasked with monitoring and enforcing the Health & Safety Code and associated regulations via licensing visits because these revisions will clarify how to determine licensed capacity, when an assistant provider is required and will establish record keeping requirements.

FILING INSTRUCTIONS

Revisions to all manuals are indicated by a vertical line in the left margin. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-16-06. The latest prior manual letter containing Family Child Care Homes regulations changes was Manual Letter No. CCL-15-10.

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

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

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

102352 DEFINITIONS**102352**

- (a) (1) "Adult" or "Substitute Adult" means a person who is 18 years of age or older.
- (2) "Applicant" means any person or persons making an application for a license to operate a family child care home.
- (3) "Assistant Provider" means a person at least 14 years of age who is primarily involved in caring for children during the hours that the home provides care.
- (b) (Reserved)
- (c) (1) "California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.
- (2) "Capacity" means the maximum number of children for whom care is authorized at any one time.
- (3) "Child" means a person, including an infant, who has not yet reached his or her eighteenth birthday.
- (4) "Child Abuse Central Index" means the California Department of Justice maintained statewide, multi-jurisdictional, centralized index of child abuse investigation reports. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse and/or severe neglect. Each child protection agency (police, sheriff, county welfare and probation departments) is required by law to forward to the California Department of Justice a report of every child abuse incident it investigates, unless an incident is determined to be unfounded.

102352 DEFINITIONS (Continued)

102352

- (5) "Child Abuse Central Index Clearance" means that the California Department of Justice has conducted a name search of the index and the search did not result in a match or the search resulted in a match but the California Department of Social Services determined after an investigation that the allegation of child abuse or neglect was not substantiated.
- (6) "Completed Application" means that all required information and documentation has been provided to the Department, including the completed application form and, for a large family child care home, a fire clearance; and that a home visit has been completed.
- (7) "Conviction" means:
- (A) A criminal conviction in California, or
 - (B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.
- (8) "Criminal Record Clearance" means an individual has a California clearance and an FBI clearance.
- (d) (1) "Deficiency" means any failure to comply with any provision of the California Child Day Care Act (Health and Safety Code, Section 1596.70 et seq.) and/or regulations adopted by the Department pursuant to the Act.
- (2) "Department" means the State Department of Social Services. This term supersedes the term "Licensing agency" as used in previous regulations.
- (3) "Director" means the Director of Social Services.
- (e) (Reserved)
- (f) (1) "Family Day Care" or "Family Child Care" means regularly provided care, protection and supervision of children, in the care giver's own home, for periods of less than 24 hours per day, while the parents or authorized representatives are away. The term "Family Child Care" supersedes the term "Family Day Care" as used in previous regulations.
- (A) "Small Family Child Care Home" means a home that provides family child care for up to six children, or for up to eight children if the criteria in Section 102416.5(b) are met. These capacities include children under age 10 who reside at the licensee's home.
 - (B) "Large Family Child Care Home" means a home that provides family child care for up to 12 children, or for up to 14 children if the criteria in Section 102416.5(d) are met. These capacities include children under age 10 who reside at the licensee's home and the assistant provider's children under age 10.

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(t) (Reserved)

(u) (Reserved)

(v) (Reserved)

(w) (Reserved)

(x) (Reserved)

(y) (Reserved)

(z) (Reserved)

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.74, 1596.75, 1596.77, 1596.770, 1596.78, 1596.791, 1597.44, and 1597.465, Health and Safety Code; and Section 244, Government Code.

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102416.5 STAFFING RATIO AND CAPACITY**102416.5**

- (a) The capacity specified on the license shall be the maximum number of children for whom care may be provided at any one time.
- (b) For a Small Family Child Care Home, the maximum number of children for whom care may be provided at any one time, including children under age 10 who reside at the licensee's home, shall be one of the following:
 - (1) Four infants; or
 - (2) Six children, no more than three of whom may be infants; or
 - (3) More than six and up to eight children, without an additional adult attendant, only if the criteria in Section 1597.44 of the Health and Safety Code are met.

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Health and Safety Code section 1597.44 states:

"A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

- (a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.
- (b) No more than two infants are cared for during any time when more than six children are cared for.
- (c) The licensee notifies each parent that the facility is caring for two additional schoolage children and that there may be up to seven or eight children in the home at one time.
- (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented."

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- (c) The total licensed capacity for a Small Family Child Care Home shall not exceed eight children.
- (d) For a Large Family Child Care Home, the maximum number of children for whom care may be provided at any one time when there is an assistant provider in the home, including children under age 10 who reside at the licensee's home and the assistant provider's children under age 10, shall be either:
 - (1) Twelve children, no more than four of whom may be infants; or
 - (2) More than twelve and up to fourteen children only if the criteria in Section 1597.465 of the Health and Safety Code are met.

102416.5 STAFFING RATIO AND CAPACITY
(Continued)**102416.5**

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Health and Safety Code section 1597.465 states:

"A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

- (a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.
- (b) No more than three infants are cared for during any time when more than 12 children are being cared for.
- (c) The licensee notifies a parent that the facility is caring for two additional schoolage children and that there may be up to 13 or 14 children in the home at one time.
- (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented."

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- (e) If no assistant provider is present at a Large Family Child Care Home, then the licensee shall comply with the capacity requirements for a Small Family Child Care Home as specified in subsections (b) and (c).
- (f) The total licensed capacity for a Large Family Child Care Home shall not exceed fourteen children.
- (g) For the purpose of meeting the criteria in Sections 1597.44 and 1597.465 of the Health and Safety Code, for a school age child who is under age six, the licensee shall maintain documentation verifying the child's enrollment and attendance at kindergarten, including transitional kindergarten, or elementary school.
 - (1) The documentation requirement shall be met by either of the following:
 - (A) Documentation from the school in which the child is enrolled and attending verifying the child's enrollment and attendance, or
 - (B) A signed and dated statement from the child's authorized representative verifying the child's enrollment and attendance.
 - (2) The documentation and statement described in paragraph (1) shall include the name of the child, the name of the school the child is enrolled in and attending, the date of the child's enrollment and the date the child started attending the school.

102416.5 STAFFING RATIO AND CAPACITY**102416.5**

(Continued)

- (3) The licensee shall obtain the documentation or statement described in paragraph (1) at the beginning of each school year, no later than 30 calendar days from the date the child begins attending school, until the child is six years of age. If a child enrolls in and begins attending school after the school year has commenced, then the licensee shall obtain the documentation or statement described in paragraph (1) upon enrollment or within 30 calendar days following the child's enrollment.
- (4) The documentation or statement described in paragraph (1) shall be maintained in the child's record pursuant to Section 102421.
- (h) For a Family Child Care Home that meets the criteria in Sections 1597.44 or 1597.465 of the Health and Safety Code to care for up to two additional children, the licensee shall maintain proof of parent notification in the child's record pursuant to Section 102421.
 - (1) For a Small Family Child Care Home that meets the criteria to care for up to two additional children, the licensee shall maintain proof of parent notification as specified in Section 1597.44(c) of the Health and Safety Code.
 - (2) For a Large Family Child Care Home that meets the criteria to care for up to two additional children, the licensee shall maintain proof of parent notification as specified in Section 1597.465(c) of the Health and Safety Code.
- (i) For the purpose of meeting the criteria in Sections 1597.44 and 1597.465 of the Health and Safety Code "school age child" means a child who meets one of the following criteria:
 - (1) Is enrolled in and attending kindergarten, including transitional kindergarten, or elementary school; or
 - (2) Is at least six years of age.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.78, 1597.44, and 1597.465, Health and Safety Code.

102417 OPERATION OF A FAMILY CHILD CARE HOME**102417**

- (a) The licensee shall be present in the home and shall ensure that children in care are supervised at all times. When circumstances require the licensee to be temporarily absent from the home, the licensee shall arrange for a substitute adult to care for and supervise the children during his/her absence. Temporary absences shall not exceed 20 percent of the hours that the facility is providing care per day.
- (b) The home shall be kept clean and orderly, with heating and ventilation for safety and comfort.
- (c) The home shall maintain telephone service.
- (d) The home shall provide safe toys, play equipment and materials.

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

- (n) A family child care home that maintains liability insurance or a bond pursuant to Section 102417(m)(1) or (2), and that provides care in premises that are rented or leased or uses premises which share common space governed by a homeowners' association, shall name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:
- (1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.
 - (2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.
 - (3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.
- (o) The licensee shall maintain documentation of proof of control of property at the Family Child Care Home for review by the Department.
- (1) If the licensee owns or is buying the home, "proof of control of property" is a copy of the property deed, the property tax statement, or a payment coupon from the mortgage company or bank.
 - (2) If the licensee is operating on rented or leased property, "proof of control of property" is a copy of the rental agreement or lease.
- (p) A prospective Family Child Care Home licensee who resides in a rental property shall provide written notice of intent to operate a Family Child Care Home to the landlord or owner of the rental property prior to the commencement of operation of the Family Child Care Home in accordance with Section 1597.40(d) of the Health and Safety Code. The licensee shall maintain proof of this notification at the Family Child Care Home for review by the Department.
- (1) The licensee shall provide the landlord or owner of the rental property with a completed LIC 9151 (Rev. 8/14) Property Owner/Landlord Notification, which is incorporated by reference, for this purpose and maintain a copy of the completed form at the Family Child Care Home for review by the Department.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)

102417

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Health and Safety Code section 1597.40(d) states:

- "(1) A prospective family day care home provider, who resides in a rental property, shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family day care home.
- (2) For family day care home providers who have relocated an existing licensed family day care home program to a rental property on or after January 1, 1997, less than 30 days' written notice may be provided in cases where the department approves the operation of the new location of the family day care home in less than 30 days, or the home is licensed in less than 30 days, in order that service to the children served in the former location not be interrupted.
- (3) A family day care home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.
- (4) Notwithstanding any other provision of law, upon commencement of, or knowledge of, the operation of a family day care home on his or her property, the landlord or property owner may require the family day care home provider to pay an increased security deposit for operation of the family day care home. The increase in deposit may be required notwithstanding that a lesser amount is required of tenants who do not operate family day care homes. In no event, however, shall the total security deposit charged exceed the maximum allowable under existing law.
- (5) Section 1596.890 shall not apply to this subdivision."

HANDBOOK ENDS HERE

- (q) A licensee who operates on rented or leased property, and who wishes to increase the capacity of the Family Child Care Home as specified in Section 102416.5(b)(3) or Section 102416.5(d)(2), shall obtain the written consent of the property owner/landlord to increase the home's capacity to eight or 14 children.
 - (1) The licensee shall maintain the original of the completed and signed LIC 9149 (Rev. 8/14) Property Owner/Landlord Consent, which is incorporated by reference, attached to the Family Child Care Home's license on file in the home.
- (r) A signed and dated copy of LIC 9052 (4/88), Notice of Employee Rights, shall be maintained in the employee's personnel record.

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

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

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.78, 1596.841, 1596.846(b) and (c), 1596.871(c)(2), 1596.880, 1596.881, 1596.882, 1596.8897, 1597.30, 1597.40, 1597.44, 1597.45, 1597.46, 1597.465, 1597.531 and 1597.54(b)(2), Health and Safety Code.

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

- (1) If the licensee denies a parent or authorized representative the right to enter and inspect the family child care home or retaliates against any child or any child's parent or authorized representative, the Department shall issue the licensee a warning citation.
- (2) For any subsequent violation of this right, the Department shall take appropriate action including, but not limited to, license revocation and imposition of a civil penalty upon the home of fifty dollars (\$50) per violation.
- (3) The person present who is in charge of the family child care home shall determine whether to deny access to the following:
 - (A) An adult whose behavior presents a risk to children present in the home; and
 - (B) A parent who is subject to a court order denying him/her contact with the child if so requested by the child's parent or authorized representative.

(g) If a child's parent or authorized representative refuses to sign the LIC 995A (8/06), a dated notation to that effect, containing the parent or authorized representative's name and telephone number, shall be kept in the child's record.

(h) The licensee shall provide a copy of the Department Issued Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B Rev. 05/03) sent by the Department, that is still in effect, to one parent or authorized representative of every child when the parent or authorized representative arranges for child care services or on the first day the child receives care, whichever is first.

(1) Upon notice from the Department that the excluded/removed individual may return to the facility, the licensee shall provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 03/01) to one parent or authorized representative of every child in Care within one day of receipt of the notice and addendum from the Department.

(2) The licensee may provide the parent or authorized representative with the Family Child Care Home Explanation of Removals/Exclusions and Reinstatement, LIC 995D (5/03).

(i) The licensee shall obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in Sections 102419(h) and (h)(1) and maintain copies of the receipt in each child's record for the time period specified in Section 102421(a)(1).

(j) Copies of the signed receipt shall be available to the Department as provided in Section 102391(d).

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

102421 CHILD'S RECORDS**102421**

- (a) The licensee shall maintain, in each child's record, the signed and dated notice form required in Section 102419(d).
- (1) The licensee shall keep the signed and dated notice form for at least three years following termination of service to the child.
- (b) The licensee shall maintain, in each child's record, a copy of the emergency information card as required in Section 102417(g)(7).
- (c) In any case in which the licensee cares for an additional child pursuant to Section 102416.5(b) for a Small Family Child Care Home or Section 102416.5(d) for a Large Family Child Care Home, the licensee shall maintain, in the child's record, a copy of documentation verifying the child's enrollment and attendance at kindergarten, including transitional kindergarten, or elementary school as required in Section 102416.5(g).
- (d) In any case in which the licensee cares for an additional child pursuant to Section 102416.5(b) for a Small Family Child Care Home or Section 102416.5(d) for a Large Family Child Care Home, the licensee shall maintain, in the child's record, proof of parent notification that the facility is caring for an additional child as required in Section 102416.5(h).
- (1) The licensee shall maintain a completed and signed LIC 9150 (Rev. 8/14) Parental Notification Additional Children in Care, which is incorporated by reference, for this purpose.
- (e) In any case in which a licensee releases a minor to a peace officer pursuant to Section 305 of the Welfare and Institutions Code, the licensee shall provide the peace officer with the address and telephone number of the minor's parent or authorized representative in order to enable the peace officer to make the notification required by Section 308 of the Welfare and Institutions Code.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.78, 1596.857, 1596.876, 1597.30, 1597.44 and 1597.465, Health and Safety Code.

102423 PERSONAL RIGHTS**102423**

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

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- (b) Repealed by Manual Letter No. CCL06-07, effective 9/10/06

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

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