

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 80001(c)(6)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index..”

Factual Basis:

This section is necessary to place this definition into regulation because existing regulations state that all license applicants, employees and adults associated with a licensed facility must submit a Child Abuse Central Index form so that the Department may conduct a search of the Child Abuse Central Index. This definition is taken from the definition of the Child Abuse Central Index within the California Department of Justice produced brochure, dated 2000, about the Child Protection Program.

Final Modification:

This section is renumbered to Section 80001(c)(7) for consistency of format.

Section 80001(c)(7)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index clearance.”

Factual Basis:

This adoption is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility that cares for children depends upon whether the individual has a “Child Abuse Central Index clearance.” In addition, clients or persons who are placing clients in facilities that care for children and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand what a clearance means when a “Child Abuse Central Index clearance” is issued.

Final Modification:

This section is renumbered to Section 80001(c)(8) for consistency of format.

Sections 80001(c)(8) through (17) [Renumbered from Sections 80001(c)(6) through (15)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80001(c)(6) through (15).

Factual Basis:

Sections 80001(c)(6) through (15) are renumbered to Sections 80001(c)(8) through (17) for consistency of format with the adoption of new Sections 80001(c)(6) and (7).

Final Modification:

These sections are renumbered to Sections 80001(c)(9) through (18), respectively, for consistency of format.

Section 80001(c)(18) et seq.

Specific Purpose:

The specific purpose of these sections is to define the term “conviction.”

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations state the actions that the Department is required to take if the Department learns that an individual has been “convicted” of a crime.

Final Modification:

This section is renumbered to Section 80001(c)(19) for consistency of format.

Section 80001(c)(19)

Specific Purpose:

The specific purpose of this section is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether they have a “criminal

record clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a California Department of Justice (DOJ) and a Federal Bureau of Investigation (FBI) clearance.

Final Modification:

This section is renumbered to Section 80001(c)(20) for consistency of format and amended to remove reference to the Department of Justice for clarity.

Section 80001(d)(6)

Specific Purpose:

The specific purpose of this section is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 80001(c)(19) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Final Modification:

This section is renumbered to Section 80001(c)(1) because throughout the entire regulations all references to “Department of Justice Clearance” are amended to “California Clearance.” The definition was renamed “California Clearance” at the request of the Department of Justice.

Sections 80001(d)(7) through (9) [Renumbered from Sections 80001(d)(6) through (8)]

Specific Purpose:

The specific purpose of these sections is to renumber Sections 80001(d)(6) through (8).

Factual Basis:

Sections 80001(d)(6) through (8) are renumbered to Sections 80001(d)(7) through (9) for consistency of format with the adoption of new Section 80001(d)(6).

Final Modification:

These sections are renumbered to Sections 80001(d)(6) through (8) for consistency of format with the removal of the “Department of Justice Clearance” from this section.

Section 80001(f)(1)

Specific Purpose:

The specific purpose of this section is to define the term “Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 80001(c)(19) includes a “Federal Bureau of Investigation (FBI) clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon Department for protection must have a clear definition of a “Federal Bureau of Investigation (FBI) clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Federal Bureau of Investigation (FBI) clearance” is issued.

Section 80001(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because Section 80019(b) states that a medical professional, under certain conditions is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 80001(m)(2) [Renumbered from Section 80001(m)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80001(m)(1).

Factual Basis:

Section 80001(m)(1) is renumbered to Section 80001(m)(2) for consistency of format with the adoption of new Section 80001(m)(1).

Section 80001(r)(1)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. Therefore, it is important to provide a definition for those who may be affected.

Final Modification:

This definition is amended in response to public testimony, to include efforts to reestablish good character since the date of the last conviction, including but not limited to education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service.

Sections 80001(r)(2) and (3) [Renumbered from Sections 80001(r)(1) and (2)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80001(r)(1) and (2).

Factual Basis:

Sections 80001(r)(1) and (2) are renumbered to Sections 80001(r)(2) and (3) for consistency of format with the adoption of new Section 80001(r)(1).

Section 80001(s)(2)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to define this term to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual's rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Sections 80001(s)(3) through (8) [Renumbered from Sections 80001(s)(2) through (7)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80001(s)(2) through (7).

Factual Basis:

Sections 80001(s)(2) through (7) are renumbered to Sections 80001(s)(3) through (8) for consistency of format with the adoption of new Section 80001(s)(2).

Sections 80019(a)(2)(D)1. and 2. (Handbook)

Specific Purpose:

The specific purpose of this amendment is to repeal the volunteer fingerprint exemption criteria from handbook.

Factual Basis:

These sections are repealed because this volunteer exemption language was amended by Senate Bill (SB) 1992, Chapter 819, Statutes of 2000.

Section 80019(b)(6) et seq.

Specific Purpose:

The purpose of this amendment is to repeal the volunteer fingerprint exemption criteria.

Factual Basis:

These sections are repealed because they were placed into this regulation affecting all community care facilities in error. The volunteer exemption criteria is specified in Health and Safety Code Section 1522(b)(4)(B) which affects adult day care and adult day support centers only and does not apply to any other community care facility category. This volunteer exemption language is now correctly being placed in proposed Section 80019(b)(7)(D).

Section 80019(b)(6) [Renumbered from Section 80019(b)(7)]

Specific Purpose:

The purpose of this amendment is to renumber Section 80019(b)(7) as Section 80019(b)(6).

Factual Basis:

This amendment to renumber is necessary for consistency of format with the repeal of existing Section 80019(b)(6).

Section 80019(b)(7) [Renumbered from Section 80019(b)(8)] and New Section 80019(b)(7)(D) et seq.

Specific Purpose:

Section 80019(b)(8) is being renumbered to Section 80019(b)(7) and Section 80019(b)(7)(D) et seq. is being added. The purpose of the adoption of Section 80019(b)(7)(D) et seq. is to add volunteers and specific qualifying criteria to the list of individuals, employed at adult day care and adult day support centers, who are exempt from submitting fingerprints.

Factual Basis:

The language proposed in Section 80019(b)(7)(D) et seq. was repealed from proposed Section 80019(b)(6) above and adopted in proposed Section 80019(b)(7)(D) et seq. This amendment is necessary because these sections were placed into existing Section 80019(b)(6) et seq., affecting all community care facilities, in error. These volunteer exemptions apply to adult day care and adult day support centers only. Also, Section 80019(b)(8) is being renumbered to Section 80019(b)(7) for consistency of format with the repeal of existing Section 80019(b)(6).

Sections 80019(b)(8) and (9) [Renumbered from Sections 80019(b)(9) and (10)]

Specific Purpose:

The purpose of this amendment is to renumber Sections 80019(b)(9) and (10) as Sections 80019(b)(8) and (9).

Factual Basis:

This amendment to renumber is necessary for consistency of format with the repeal of existing Section 80019(b)(6).

Section 80019(d)

Specific Purpose:

The specific purpose of this amendment is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual's statement regarding his/her criminal history be on the LIC 508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 80019(e) is amended to require that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 80019(d)(1) et seq. (New)

Specific Purpose:

The specific purpose of these sections is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

These sections were previously in Section 80065(i). This amendment is necessary because it is logical to place the section that specifies what an individual must declare on a Criminal

Record Statement directly following the requirement that an individual sign a Criminal Record Statement.

Final Modification:

In response to public testimony, Section 80019(d)(1)(A) is amended to clarify that a person signing a LIC 508 must declare whether they were ever convicted of a crime other than a minor traffic violation regardless if a pardon was granted for the conviction, receipt of an expungement pursuant to Penal Code Section 1203.4 or the conviction sealed as the result of a court order.

Section 80019(d)(2)[Renumbered from Section 80019(d)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019(d)(1).

Factual Basis:

Section 80019(d)(1) is renumbered to Section 80019(d)(2) for consistency of format with addition of a new Section 80019(d)(1) [previously Section 80065(i)].

Section 80019(d)(2)(B) et seq. [Renumbered from Section 80019(d)(1)(B) et seq.] (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that allows for citation for failure to submit fingerprints.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 80019(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Section 80019(d)(2) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for continued employment.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 80019(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Sections 80019(d)(2)(B) and (d)(2)(B)1. (New)

Specific Purpose:

The specific purpose of these sections is to clarify that a licensee or license applicant may not submit fingerprints for individuals who are not or will not be associated with his or her facility.

Factual Basis

These sections are necessary to prevent licensees from allowing non-licensed entities from using their license number to process background checks on individuals who do not or will not work or reside in their facility. In addition to a violation of statute, this practice creates an undue workload for the Department.

Final Modification:

At the Department's discretion, these sections are repealed. The practice of using a community care license number, by a business not regulated by the Department, or by a licensed facility subject to a processing fee in order to avoid paying a fingerprint fee is only a problem in licensed family child care homes. Therefore, the Department determined that it is unnecessary to include this language in the general licensing category.

Section 80019(e) et seq.

Specific Purpose:

The specific purpose of this amendment is to replace existing language with the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

Factual Basis:

This amendment is necessary to implement the requirements of Health and Safety Code Section 1522.04(a). Section 1522.04(a) requires that individuals obtain either a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

#### Final Modification:

In response to public testimony, this section is amended to clarify all individuals subject to criminal record review pursuant to Health and Safety Code Section 1522 shall prior to working, residing, or volunteering in a licensed facility, receive a California clearance or a criminal record exemption as required by the Department.

#### Section 80019(f) et seq.

#### Specific Purpose/Factual Basis:

These sections are amended to clarify that a transfer may be requested by an applicant or a licensee; to amend the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add new LIC 508D; to add the phrase "to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02, the LIC 508, Criminal Record Statement, Rev.1/03, and the LIC 508D, Criminal Record Statement for Foster Family Homes, Small Family Homes and Certified Family Homes, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

#### Sections 80019(g) and (g)(1)

##### Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 80019(e) will result in an immediate and continued civil penalty.

##### Factual Basis:

This adoption is necessary because although Section 80054 gives the Department authority to assess civil penalties for failure to correct cited violations of any regulation section, as agreed upon in a plan of correction, statute allows the Department to assess immediate civil penalties for fingerprint violations.

#### Section 80019(h)

##### Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 80019(e) may result in the denial of a license application or a suspension/revocation of a license.

##### Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Section 80019(i)(3) [Renumbered from Section 80019(g)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019(g) to Section 80019(i), to delete the word prospective and to make grammatical changes. Also, Section 80019(g) et seq. are renumbered to Section 80019(i) et seq.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 80019(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 80019(g) is renumbered to Section 80019(i) for consistency of format.

Sections 80019(j) through (k) [Renumbered from Sections 80019(h) through (j)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80019(h) through (j) to Sections 80019(j) through (k).

Factual Basis

Sections 80019(h) through (j) are renumbered to Sections 80019(j) through (k) for consistency of format.

Section 80019(l)

Specific Purpose:

The specific purpose of this section is to place into regulation the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department, by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1522(e). At the conclusion of the investigation, the

Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a Temporary Suspension Order (TSO) or immediate exclusion action.

Final Modification:

At the Department's discretion, Section 80019(l) is deleted because it has proven to be problematic and difficult, if not impossible, to enforce. The regulation places the responsibility to report subsequent arrests and convictions on the person with an exemption who may or may not be a licensee. If an individual who is not a licensee violates the regulation, the Department could not cite the individual nor take action against the licensee for the individual's non-compliance. Additionally, Department of Justice reporting time has increased dramatically making the need for the individual to self-report unnecessary.

Section 80019(l)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e., facility removal and/or exemption application or administrative action).

Final Modification:

At the Department's discretion, Section 80019(l)(1) is deleted. [See Final Modification to Section 80019(l) above.]

Section 80019(m)

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement in proposed Section 80019(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information. Without the authority to verify the information about the event, obtaining the information from the individual would be useless.

Final Modification:

In response to public testimony, this section is amended to add the phrase “from a law enforcement agency or court” for clarity. Section 80019(m) is renumbered to Section 80019(l) for consistency of format.

Section 80019(m)(1)

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual’s criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the DOJ. With the new requirement in proposed Section 80019(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then supply the Department additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the event, obtaining the information would be useless.

Final Modification:

In response to public testimony, this section is amended to add the phrase “from a law enforcement agency or court” for clarity.

Sections 80019.1(a) and (a)(1) through (5)

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in this subsection. The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care. This section is necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 80019.1(b)

Specific Purpose:

The specific purpose of this section is to require that the licensee confirm within five days, that the individual has been removed.

Factual Basis:

This section is necessary so that the Department will have positive and immediate confirmation that the individual has been removed. Individuals who are ordered removed are individuals who have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 80019.1(b)(1)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual’s removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual’s name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, GRev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

This section is amended to reflect the current form's revision date (9/03) for the LIC 300A, LIC 300B, LIC 300C, and LIC 300D.

Section 80019.1(c) [Renumbered from Section 80019.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019.1(a) to Section 80019.1(c) and to delete the phrase "from Section 80019(b) or Section 80019(c)(2).

Factual Basis:

This amendment is necessary to renumber Section 80019.1(a) to (c) for consistency of format with the addition of new Sections 80019.1(a) and (b) and to repeal out-of-date cross-references for clarity and consistency.

Sections 80019.1(d) and (d)(1)

Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption.

Factual Basis:

These sections are necessary as a precursor to existing Section 80019.1(c), now renumbered to Section 80019.1(g), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written request for the exemption, the individual's personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual's rehabilitation.

Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Additionally, since adoption of these regulations, the Department has extended the time allowed to submit an exemption request and required documents from 30 days to 45 days to allow individuals additional time to obtain court documents verifying that their probation was informal. Finally, Section 80019.1(d)(1) is amended, at the Department's discretion, to specifically note that the documents the Department will request include police reports and certified court documents.

Sections 80019.1(d)(2) and (d)(3)

Specific Purpose:

The specific purpose of these sections is to state what action the Department will take if the documents, requested by the Department in the written notice, are not submitted within thirty (30) days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Additionally, since adoption of these regulations, the Department has extended the time allowed to submit an exemption

request and required documents from 30 days to 45 days to allow individuals additional time to obtain court documents verifying that their probation was informal.

Section 80019.1(d)(4) [New]

Specific Purpose

The specific purpose of this amendment is to add individual exemption criteria.

Factual Basis

This section is added at the Department's discretion. This section was not included originally because the Department proposed, through AB 1240, to delete individual exemptions. The provision to repeal individual exemptions was amended out of the language of AB1240 on January 22, 2004.

Sections 80019.1(e) and (e)(1) [Renumbered from Sections 80019.1(b) and (b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019.1(b) to Section 80019.1(e) and to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

These sections are necessary for consistency of format and clarity. Renumbering Section 80019.1(b) to Section 80019.1(e) is necessary with the addition of new Sections 80019.1(a), (b), and (d). The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 80019.1(e)(6)(A)

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E.

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most

importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department's Internet web site at (916) 657-1893.

Final Modification:

This section is amended to reflect the current form revision date (7/03) for the LIC 301E.

Section 80019.1(e)(8)(A)1.

Specific Purpose:

The specific purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03 and to add the LIC 508D (Rev. 1/03).

Factual Basis:

The LIC 508 was revised in January 2003 to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied. The adoption of the LIC 508D is necessary as this form is the appropriate form pertaining to Foster Family Homes, Small Family Homes and Certified Family Homes.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03 and the LIC 508D, Criminal Record Statement for Foster Family Homes, Small Family Homes and Certified Family Homes, Rev.1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Existing Handbook Sections 80019.1(b)(9)(A) and (B) et seq. (Repealed)

Specific Purpose:

The purpose of this section is to repeal the handbook sections that reference non-exemptible crimes in Health and Safety Code Section 1522(g) and Penal Code Section 667.5(c).

Factual Basis:

This amendment is necessary because these handbook sections are outdated, incomplete and confusing because it is difficult to decipher which specific crimes are non-exemptible. A comprehensive list with specific crime names is included in the new Handbook Sections 80019.1(m)(1) through (52).

Section 80019.1(f) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

Factual Basis

These sections are necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding these sections makes it clear to the affected individual that factors are considered.

Sections 80019.1(g) through (i) [Renumbered from Sections 80019.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80019.1(c) through (e).

Factual Basis:

Sections 80019.1(c) through (e) are renumbered to Sections 80019.1(g) through (i) for consistency of format with the adoption of new Sections 80019.1(a), (b), (d), and (f).

Existing Section 80019.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 80019.1(f) et seq. from this location.

Factual Basis:

The language in these sections, with slight modifications, can be found in the new Section 80019.1(r).

Existing Section 80019.1(g) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 80019.1(g) from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 80019.1(t).

Section 80019.1(j) and (j)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because existing regulation Section 80019.1(b)(8), now renumbered to Section 80019.1(e)(8), includes “evidence of honesty and truthfulness” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor that is truthful and consistent with their criminal history. Additionally, the Department has encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. This section will allow the Department to deny or rescind an exemption if it cannot obtain honest statements supported by the individual’s criminal history or if it becomes aware that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

New Section 80019.1(j)(2)

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate successful completion of these terms before being deemed rehabilitated.

Section 80019.1(j)(2)(A)

Specific Purpose:

The specific purpose of this section is to state that if an individual did not receive formal probation, the Department may consider granting a criminal record exemption.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and may consider granting a criminal record exemption.

Section 80019.1(j)(2)(B)

Specific Purpose:

The specific purpose of this section is to state that the requirements of Section 80019.1(j)(2) do not apply to certified Family Homes.

Factual Basis:

This section is necessary to allow individuals associated with Certified Family Homes to obtain an exemption while he/she is currently on probation or parole. Individuals who are certified Foster Family Agencies, who provide oversight of these individuals, may be considered for an exemption if they are still on probation or parole.

## Section 80019.1(k)

### Specific Purpose:

The specific purpose of this section is to introduce the following seven subsections that list specific criteria that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

### Factual Basis:

This section is necessary to protect the health and safety of clients in care and to specify for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1522(g) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 80019.1(e) (Renumbered from Section 80019.1(b) by these proposed regulations) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions, the more years are required since the last period of probation or parole before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

## Section 80019.1(k)(1)

### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or probation before the Department will consider granting a criminal record exemption.

### Factual Basis:

Probation is a part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if

they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and noncriminal activity on their own for at least one year since incarceration or completing probation without it being required for compliance with their probation term and without the supervision of a probation officer.

Requiring one year beyond incarceration or probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year since completing probation is minimal and vital. If an individual can demonstrate one year since incarceration or probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

#### Section 80019.1(k)(2)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable,

community care clients that the Department has been entrusted to protect, four years without subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

#### Section 80019.1(k)(3)

##### Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 80019.1(k)(4)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

Section 80019.1(k)(5)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 80019.1(k)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person.

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

#### Section 80019.1(k)(7)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in 80019.1(k)(1) through (5) will begin from the last date of conviction.

##### Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

#### Section 80019.1(l)

##### Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the criteria specified in Sections 80019.1(k)(1) through (6) is rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

##### Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without subsequent criminal activity, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

#### Section 80019.1(m) and Handbook Sections 80019.1(m)(1) through (52)

##### Specific Purpose:

The specific purpose of Section 80019.1(m) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1522(g)(1) will not be granted a criminal record exemption. Also, handbook is being added.

##### Factual Basis:

Section 80019.1(m) is necessary to implement and clarify the provisions of Health and Safety Code Section 1522(g)(1) which prohibits the Department from granting exemptions to individuals who have been convicted of specific crimes. This nonexemptible crimes list, previously located in Handbook Sections 80019.1(b)(9)(A) and (B), has been updated to reflect current statute. Handbook Sections 80019.1(m)(1) through (52) are added to provide the list of crimes referenced in Section 80019.1(m) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections 80019.1(m)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

#### Section 80019.1(n)

##### Specific Purpose:

The specific purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a simplified exemption.

##### Factual Basis:

This section is necessary to implement Health and Safety Code Section 1522(c)(4) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual's history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 80019.1(d) through (l).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

Section 80019.1(n)(1)

Specific Purpose:

The purpose of this section is to state that if the individual's criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 80019.1(o) of these proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

Factual Basis:

This section is necessary because if the individual's criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not include this type of evaluation, therefore the standard exemption process would be more appropriate.

Sections 80019.1(n)(2) through (4)

Specific Purpose:

The purpose of these sections is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 80019.1(o)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Section 80019.1(p) et seq. [Renumbered from Section 80019.1(h) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019.1(h), to make grammatical changes and to delete the word "prospective".

Factual Basis:

Section 80019.1(h) is renumbered to Section 80019.1(p) for consistency of format with the restructuring of Section 80019.1. Grammatical changes are made for clarity.

Deletion of "prospective" is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 80019(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility.

Section 80019.1(q)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1558 and the procedure to follow when that time limit expires.

This section establishes the limits for an individual who was excluded due to a denied exemption and for an individual who was excluded because he/she was convicted of a non-exemptible crime.

Section 80019.1(q)(1)

Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual's subsequent exemption request coincides with the exclusion limit set forth in Section 80019.1(q). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and provide an incentive to do so.

Section 80019.1(q)(2)

Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

Section 80019.1(q)(3)

Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Final Modification:

In response to public testimony, this section is amended to change, "in its discretion," to "in accordance with" the provisions in Sections 80019.1 et seq.," to grant or deny the subsequent request for an exemption.

Section 80019.1(q)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Section 80019.1(r) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications proposed for clarity, were previously at Section 80019.1(f) et seq., with the exception of new Section 80019.1(r)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9188 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer

request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02; the LIC 508, Criminal Record Statement, Rev. 1/03; and LIC 508D, Criminal Record Statement for Foster Family Homes, Small Family Homes, and Certified Family Homes, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

Section 80019.1(r)(1) is amended to reflect the current form revision date (9/03) for the LIC 9188.

Section 80019.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current laws and regulations before a transfer is considered.

Section 80019.1(t)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the individual and

the licensee, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 80019.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Section 80019.1(u) et seq.

Specific Purpose:

The specific purpose of these sections is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Section 80019.1(v) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on the assumption that the individual is rehabilitated and of good character not only for the instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Section 80019.1(w) et seq.

Specific Purpose:

The specific purpose of these sections is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Final Modification:

In response to public testimony, this section is amended for clarity by indicating “an Administrative Action”. The type of action taken would depend on whether the individual were a applicant, licensee, spouse or dependant family member who resides in the facility, or an employee. If the Department rescinds a license applicant’s exemption, the action would be an license denial. If the Department rescinds a licensee’s exemption, or the emption of a spouse or dependant family member who resides in the facility, the action would be a license revocation. If the Department rescinds an employee’s exemption, the action would be an employee exclusion.

Section 80019.1(x)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients. The administrative action process such as revocation of the license (Health and Safety Code Section 1550) or exclusion action process (Health and Safety Code Section 1558) will provide the individual with a hearing to contest the Department’s action.

Final Modification:

In response to public testimony, this section is amended for clarity. [Please see Final Modification for Section 80019.1(w).]

Section 80019.2(b)(1)

Specific Purpose:

The purpose of these amendments to add clarifying language and to delete the phrase “prior to the individual’s employment, residence or initial presence in the facility”.

Factual Basis:

The clarifying language is necessary so it cannot be assumed that the Child Abuse Central Index check is a fingerprint based check and to clarify that the Child Abuse Central Index check and fingerprints must be submitted at the same time.

Sections 80054(b), (b)(1), and (b)(1)(A)

Specific Purpose:

The specific purpose of this amendment is to convert this section from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not obtained a criminal record clearance or exemption prior to their employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual’s employment, residence or initial presence in the facility [80019(e)], this section must be amended to coincide with that requirement.

Final Modification:

This section is amended to coincide with definition name change from “Department of Justice Clearance” to “California Clearance.” Section 80054(b)(1) is repealed in response to public testimony because it duplicates Section 80054(b) and Section 80054(b)(1)(A) is renumbered to (b)(1) for consistency in numbering.

Section 80054(b)(2) [Renumbered from Section 80054(b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80054(b)(1) to 80054(b)(2).

Factual Basis:

This amendment is necessary for consistency of format.

Section 80061(c)(3)(B)

Specific Purpose:

The specific purpose of this amendment is to delete the word “cards” and to correct a cross-reference.

Factual Basis:

This amendment is necessary because fingerprint cards are not the only method used to submit fingerprints. The Department recommends an electronic method of submitting fingerprint images.

Section 80065(i) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert these sections from a requirement that an individual sign a criminal record statement pending receipt of a criminal record transcript to a requirement that an individual obtain a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or a criminal record exemption prior to an individual’s employment [Section 80019(e)], this section must be amended to coincide with that requirement.

The requirement that an individual sign a Criminal Record Statement and the subsections [Sections 80065(i)(1) and (2)], that state what an individual must declare on the Criminal Record Statement, have been deleted from this location but are added to Section 80019(d)(1).

Final Modification:

This section is amended to coincide with definition name change from “Department of Justice Clearance” to “California Clearance.”

Section 80066(a)

Specific Purpose:

The specific purpose of this amendment is to replace the term “employment application forms” with the term “personnel records,” add licensee and administrator to those whose records must be maintained on and delete “available to the licensing agency for review” from this location.

Factual Basis:

This amendment is necessary for clarity. “Personnel records” is a more appropriate term as items in Sections 80066(a)(1) through (12) are not all employment application forms. The requirement that all personnel forms be available to the licensing agency for review can now be found in Section 80066(d).

Section 80066(a)(10) [Renumbered from Section 80066(b)]

Specific Purpose:

The specific purpose of this amendment is to delete qualifying information as to who must submit a health screening, delete requirement of a health statement for volunteers from this location and to renumber Section 80066(b).

Factual Basis:

With the proposed amendments in Section 80066(a), a health screening can now be a subsection of Section 80066(a) and specifying licensee, employees and administrator is unnecessary. Volunteer requirements have been moved to the new Section 80066(b). Existing Section 80066(b) is renumbered to Section 80066(a)(10) to make the health screening a subsection of Section 80066(a).

Section 80066(a)(11)

Specific Purpose:

The specific purpose of this section is to add tuberculosis test documents to the list of personnel records that must be maintained on the licensee, administrator and all employees.

Factual Basis:

Tuberculosis test documents must be listed separately for clarity and emphasis. Tuberculosis tests are usually performed separate from a health screening. The health screening form provided by the Department includes limited space for a positive or negative tine test. Complete tuberculosis test documents could include results of a chest x-ray and/or other follow-up reports.

Section 80066(a)(12) et seq.

Specific Purpose:

The specific purpose of these sections is to add a signed criminal record statement and documentation of a criminal record clearance or exemption to the list of records that must be maintained in the employee's personnel record.

Factual Basis:

These sections are necessary for clarity. Section 80019(d) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. These sections only clarify where that statement must be maintained. In addition, Section 80019(i) requires that this documentation be kept in the individual's personnel file. These sections repeat that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee's personnel file.

Final Modification:

In response to public testimony, Section 80066(a)(12)(B) includes a cross reference for clarity.

Section 80066(a)(12)(B)1. [New]

Specific Purpose:

The specific purpose of this section is to clarify that a current and valid Administrator's Certificate is sufficient documentation of a clearance or an exemption.

Factual Basis:

At the Department's discretion this subsection is added to address the unique situation of background check documentation for Certified Administrators. The Administrator Certification program is administered by this Department. Individuals applying for an Administrator's Certificate are background checked by the Department and must have either a clearance or an exemption before certification is approved. Documentation of either a clearance or an exemption is maintained by the Administrator Certification program and is not given to the individual nor to the licensee who subsequently hires the individual. The Department inadvertently left this subsection out. The omission was brought to the Department's attention by field staff.

Section 80066(b) et seq.

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All the documents listed in this section are required by other sections. These sections repeat those requirements so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Final Modification:

In response to public testimony, Sections 80066(b)(3)(A) and (B) are amended for clarity by including cross references.

Section 80066(d)

Specific Purpose:

The specific purpose of this section is to add the word "personnel" and to include the phrase "shall be available to the licensing agency for review" that is repealed in proposed Section 80066(a) above.

Factual Basis:

This section is necessary for clarity and consistency. "Personnel records" is a more descriptive term that is used throughout this section. The phrase "shall be available to the licensing agency for review" that is repealed in proposed Section 80066(a) above, is added to the existing language as it logically follows that personnel records at the facility should be available to the licensing agency.

Section 87101(c)(15) et seq.

Specific Purpose:

The specific purpose of these sections is to define the term "conviction."

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations inform potential licensees and staff persons of actions that the Department is required to take if the Department learns that an individual has been "convicted" of a crime.

Final Modification:

This section is renumbered to Section 87101(c)(16) for consistency of format.

Section 87101(c)(16) [Renumbered from Section 87101(c)(15)]

Specific Purpose/Factual Basis:

Section 87101(c)(15) is being renumbered to Section 87101(c)(16) for consistency of format with the adoption of Section 87101(c)(15).

Section 87101(c)(17)

Specific Purpose:

The specific purpose of this regulation is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether they have a “criminal record clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a DOJ and an FBI clearance.

Final Modification:

This section is renumbered to Section 87101(c)(18) for consistency of format.

Section 87101(d)(6)

Specific Purpose:

The specific purpose of this regulation is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 87101(c)(17) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Final Modification:

This section is renumbered to Section 87101(c)(1) because throughout the entire regulations all references to “Department of Justice Clearance” are amended to “California Clearance.” The definition was renamed “California Clearance” at the request of the Department of Justice.

Sections 87101(d)(7) through (10) [Renumbered from Sections 87101(d)(6) through (9)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87101(d)(6) through (9).

Factual Basis:

Sections 87101(d)(6) through (9) are renumbered to Sections 87101(d)(7) through (10) for consistency of format with the adoption of new Section 87101(d)(6).

Final Modification:

This section is renumbered to Section 87101(d)(6) through (9) for consistency of format with the renumbering of a “Department of Justice Clearance” to Section 87101(c)(1).

Section 87101(f)(2)

Specific Purpose:

The specific purpose of this section is to define the term “Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 87101(c)(17) includes a “Federal Bureau of Investigation (FBI) clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Federal Bureau of Investigation (FBI) clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Federal Bureau of Investigation (FBI) clearance” is issued.

Section 87101(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because a medical professional, under certain conditions, is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 87101(r)(1)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals, without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. Therefore, it is important to provide a definition for those who may be affected.

Final Modification:

This definition is amended in response to public testimony. [Please see Final Modification to Section 80001(r)(1).]

Sections 87101(r)(2) through (7) [Renumbered from Sections 87101(r)(1) through (6)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87101(r)(1) through (6).

Factual Basis:

Sections 87101(r)(1) through (6) are renumbered to Sections 87101(r)(2) through (7) for consistency of format with the adoption of new Section 87101(r)(1).

Section 87101(s)(3)

Specific Purpose/Factual Basis:

This section is amended to make an editorial correction for consistency and clarity.

Section 87101(s)(4)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to define this term to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual’s rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Sections 87101(s)(5) through (10) [Renumbered from Sections 87101(s)(4) through (9)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87101(s)(4) through (9).

Factual Basis:

Sections 87101(s)(4) through (9) are renumbered to Sections 87101(s)(5) through (10) for consistency of format with the adoption of new Section 87101(s)(4).

Section 87219(b)

Specific Purpose:

The specific purpose of this amendment is to delete "California.”

Factual Basis:

This amendment is necessary because both an FBI clearance and a California, or Department of Justice clearance is required prior to licensure. Section 80001(c)(19) defines criminal record clearance as both an FBI and a Department of Justice clearance.

Existing Handbook Sections 87219(b)(3)(A) through (G) (Repealed)

New Handbook Sections 87219(b)(3)(A) through (H)

Specific Purpose:

The specific purpose of this amendment is to replace existing fingerprint exempt requirements with current exemptions.

Factual Basis:

This amendment is necessary so that the section is consistent in wording and order with other like regulation sections. Recent statutory changes (SB 1992, Chapter 819, Statutes of 2000) affecting other facility types created clearer and more extensive fingerprint exempt situations. Existing fingerprint exemptions are reworded for clarity and thoroughness and placed in an order consistent with other like sections.

Handbook Section 87219(b)(3)(I) [Renumbered from Handbook Section 87219(b)(3)(H)]

Specific Purpose:

The specific purpose of this amendment is to renumber Handbook Section 87219(b)(3)(H).

Factual Basis:

Handbook Section 87219(b)(3)(H) is renumbered to Section 87219(b)(3)(I) for consistency of format with the restructuring of Section 87219.

Section 87219(c) et seq.

Specific Purpose/Factual Basis:

These sections are restructured and amended to clarify that a transfer may be requested by an applicant or a licensee; to correct the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add the phrase "to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 87219(d)

Specific Purpose:

The specific purpose of this amendment is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual's statement regarding his/her criminal history be on the LIC 508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 87219(e) is amended to require that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev. 1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87219(d)(1) et seq.

Specific Purpose:

The specific purpose of this section is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

This section was previously in Section 87565(f). This amendment is necessary because it is logical to place the section that specifies what an individual must declare on a Criminal

Record Statement directly following the requirement that an individual sign a Criminal Record Statement.

Final Modification:

In response to public testimony, Section 87219(d)(1)(A) is amended for clarity by including “regardless if a pardon was granted for the conviction, receipt of an expungement pursuant to Penal Code Section 1203.4 or the conviction sealed as the result of a court order.”

Section 87219(d)(2) and (3) [Renumbered from Section 87219(d)(1) and (2)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87219(d)(1) and (2) and to correct a cross-reference.

Factual Basis:

Section 87219(d)(1) and (2) are renumbered to Section 87219(d)(2) and (3) and cross-references are corrected for consistency of format with the proposed restructuring of Section 87219.

Final Modification:

The cross reference to Section 87219(f) is correctly identified as (h) for clarity.

Section 87219(d)(3)(B) [Renumbered from Section 87219(d)(2)(B) (Repealed)]

Specific Purpose:

The specific purpose of this amendment is to repeal the language that allows for citation for failure to submit fingerprints.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 87219(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Sections 87219(d)(3)(B) and (d)(3)(B)1. (New)

Specific Purpose:

The specific purpose of these sections is to clarify that a licensee or license applicant may not submit fingerprints for individuals who are not or will not be associated with his or her facility.

### Factual Basis

This section is necessary to prevent licensees from allowing non-licensed entities from using their license number to process background checks on individuals who do not or will not work or reside in their facility. In addition to a violation of statute, this practice creates an undue workload for the Department.

### Final Modification:

At the Department's discretion, these sections are repealed. The practice of using a community care license number, by a business not regulated by the Department, or by a licensed facility subject to a processing fee in order to avoid paying a fingerprint fee is only a problem in licensed family child care homes. Therefore, the Department determined that it was unnecessary to include this language in the RCFE licensing category.

### Existing Section 87219(d)(3) (Repealed)

#### Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for continued employment.

#### Factual Basis:

This section is no longer necessary in light of the new requirement [Section 87219(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

### Section 87219(e) et seq.

#### Specific Purpose:

The specific purpose of this amendment is to replace existing language with the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

#### Factual Basis:

This amendment is necessary to implement the requirements of Health and Safety Code Section 1522.04(a). Section 1522.04(a) requires that individuals obtain either a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

#### Final Modification:

In response to public testimony, this section is amended to clarify all individuals subject to criminal record review pursuant to Health and Safety Code Section 1522 shall prior to working, residing, or volunteering in a licensed facility, receive a California clearance or a criminal record exemption as required by the Department.

#### Sections 87219(f) and (f)(1)

#### Specific Purpose:

The specific purpose of this amendment is to state that a violation of Section 87219(e) will result in an immediate and continued civil penalty.

Factual Basis:

This amendment is necessary because although Section 87454 gives the Department authority to assess civil penalties for failure to correct cited violations of any regulation section, as agreed upon in a plan of correction, statute allows the Department to assess immediate civil penalties for fingerprint violations.

Section 87219(g)

Specific Purpose:

The specific purpose of this amendment is to state that a violation of Section 80019(e) may result in the denial of a license application or a suspension/revocation of a license.

Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Section 87219(h)(3) [Renumbered from Section 87219(f)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber 87219(f) to 87219(h), to delete the word prospective and to make grammatical changes.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 87219(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 87219(f) is renumbered to 87219(h) for consistency of format.

Sections 87219(i) through (k) [Renumbered from Sections 87219(g) through (i)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87219(g) through (i) to Sections 87219(i) through (k).

### Factual Basis

Sections 87219(g) through (i) are renumbered to Sections 87219(i) through (k) for consistency of format.

### Section 87219(l)

#### Specific Purpose:

The specific purpose of this section is to place into regulation the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department, by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

#### Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1569.17(e). At the conclusion of the investigation, the Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a TSO or immediate exclusion action.

#### Final Modification:

At the Department's discretion, Section 80019(l) is deleted because it has proven to be problematic and difficult, if not impossible, to enforce. The regulation places the responsibility to report subsequent arrests and convictions on the person with an exemption who may or may not be a licensee. If an individual who is not a licensee violates the regulation, the Department could not cite the individual nor take action against the licensee for the individual's non-compliance. Additionally, Department of Justice reporting time has increased dramatically making the need for the individual to self-report unnecessary.

### Section 87219(l)(1) et seq.

#### Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e., facility removal and/or exemption application or administrative action).

Final Modification:

At the Department's discretion, Section 87219(l)(1) is repealed. [See Final Modification to Section 87219(l) above.]

Section 87219(m)

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement in proposed Section 87219(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information. Without the authority to verify the information about the event, obtaining the information from the individual would be useless.

Final Modification:

In response to public testimony this section is amended to (l) for consistency of format and adds the phrase "from a law enforcement agency or court."

Section 87219(m)(1)

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the

DOJ. With the new requirement in proposed Section 87219(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then to supply the Department with additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the arrest, obtaining the information would be useless.

Final Modification:

In response to public testimony, this section is amended for clarity by adding the phrase “from a law enforcement agency or court” and is renumbered to Section 87219(l)(1).

Section 87219.1(a) et seq.

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in this subsection. The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care. These sections are necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 87219.1(b)

Specific Purpose:

The specific purpose of this section is to require that the licensee confirm within five days, that the individual has been removed.

Factual Basis:

This section is necessary so that the Department will have positive and immediate confirmation that the individual has been removed. Individuals who are ordered removed are individuals who have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable

to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 87219.1(b)(1)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual's removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual's name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, Rev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

This section is amended to reflect the current form revision date (7/03) for the LIC 300A, LIC 300B, LIC 300C, and LIC 300D.

Section 87219.1(c) [Renumbered from Section 87219.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87219.1(a) to Section 87219.1(c), to delete the qualifying phrase "except for the crimes specified in Health and Safety Code Section 1569.17(e)," and to delete outdated cross-references.

Factual Basis:

This amendment is necessary for consistency of format and clarity. Renumbering Section 87219.1(a) to (c) is necessary with the addition of new Sections 87219.1(a) and (b). Existing language construction is awkward and misleading. With the new Section 87219.1(n), it is clear

that an criminal record exemption will not be granted if the individual is convicted of specific, listed crimes.

Sections 87219.1(d) and (d)(1)

Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption .

Factual Basis:

These sections are necessary as a precursor to existing Section 87219.1(c), now renumbered to Section 87219.1(g), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written request for the exemption, the individual's personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual's rehabilitation.

Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Additionally, since adoption of these regulations, the Department had extended the time allowed to submit an exemption request and required documents from 30 days to 45 days to allow individuals additional time to obtain court documents verifying that their probation was informal. Finally, Section 87219.1(d)(1) is amended, at the Department's discretion, to specifically note that the documents the Department will request include police reports and certified court documents.

Sections 87219.1(d)(2) and (d)(3)

Specific Purpose:

The specific purpose of these sections is to state what action the Department will take if the documents, requested by the Department in the written notice, are not submitted within 30 days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

#### Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Additionally, since adoption of these regulations, the Department had extended the time allowed to submit an exemption request and required documents from 30 days to 45 days to allow individuals additional time to obtain court documents verifying that their probation was informal.

#### Section 87219.1(d)(4) [New]

##### Specific Purpose

The specific purpose of this amendment is to add individual exemption criteria.

##### Factual Basis

This section is added at the Department's discretion. This section was not included originally because the Department proposed, through AB 1240, to delete individual exemptions. The provision to repeal individual exemptions was amended out of the language of AB1240 on January 22, 2004.

#### Sections 87219.1(e) and (e)(1) [Renumbered from Sections 87219.1(b) and (b)(1)]

##### Specific Purpose:

The specific purpose of this amendment is to renumber Section 87219.1(b) to 87219.1(e) and to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

This section is necessary for consistency of format and clarity. Renumbering Section 87219.1(b) to 87219.1(e) is necessary with the addition of new Sections 87219.1(a), (b), and (d). The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 87219.1(e)(6)(A)

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E.

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Final Modification:

This section is amended to reflect the current form LIC 301E revision date (7/03).

Section 87219.1(e)(8)(A)1.

Specific Purpose:

The purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03.

Factual Basis:

The LIC 508, Criminal Record Statement, was revised in January 2003 to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev. 1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87219.1(f) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

Factual Basis

These sections are necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Sections 87219.1(g) through (i) [Renumbered from Section 87219.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87219.1(c) through (e).

Factual Basis:

Sections 87219.1(c) through (e) are renumbered to Sections 87219.1(g) through (i) for consistency of format with the adoption of new Sections 87219.1 (a), (b), (d), and (f).

Existing Section 87219.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87219.1(f) et seq. from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 87219.1(r).

Existing Section 87219.1(g) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87219.1(g) from this location.

Factual Basis:

This language in this section, with slight modifications, can be found in the proposed new Section 87219.1(t).

Sections 87219.1(j) and (j)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because existing regulation Section 87219.1(b)(8), now renumbered to Section 87219.1(e)(8), includes “evidence of honesty and truthfulness” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor, that is truthful and consistent with their criminal history. Additionally, the Department has encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. This section will allow the Department to deny or rescind an exemption if it cannot obtain honest statements supported by the individual’s criminal history or if it becomes aware that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

Sections 87219.1(j)(2) and (j)(2)(A)

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate successful completion of these terms before being deemed rehabilitated.

Section 87219.1(k)

Specific Purpose:

The specific purpose of this section is to introduce the following six subsections that list specific crime conviction categories and years since the last conviction that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

Factual Basis:

This section is necessary to protect the health and safety of clients in care and to provide for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1569.17(g) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 87219.1(e) (Renumbered from Section 87219.1(b) by these proposed regulations) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction varies depending on the type of crime and number of convictions. In general, the more serious the crime and/or the more convictions, the more years are required without a subsequent conviction before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

Section 87219.1(k)(1)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or probation before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation is part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and non-criminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and non-criminal activity on their own for at least one year without it being required for compliance with their probation terms and without the supervision of a probation officer.

Requiring one year beyond incarceration, probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year without a subsequent conviction is minimal and vital. If an individual can demonstrate one year since incarceration or the end of probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87219.1(k)(2)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has

been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

#### Section 87219.1(k)(3)

##### Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report

on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

#### Section 87219.1(k)(4)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without

subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

Section 87219.1(k)(5)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87219.1(k)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person.

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

Section 87219.1(k)(7)

Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in Sections 87219.1(k)(1) through (5) will begin from the last date of conviction.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

Section 87219.1(l)

Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the

requirements specified in Sections 87219.1(k)(1) through (6) is rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without a subsequent criminal activity, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

Section 87219.1(m) and Handbook Sections 87219.1(m)(1) through (52)

Specific Purpose:

The specific purpose of Section 87219.1(m) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1569.17(f)(1) will not be granted a criminal record exemption. Also, handbook is being added.

Factual Basis:

Section 87219.1(m) is necessary to implement and clarify the provisions of Health and Safety Code Section 1569.17(f)(1) which prohibits the Department from granting exemptions to individuals who have been convicted of specific crimes. Handbook Sections 87219.1(m)(1) through (52) are added to provide the Health and Safety Code referenced in Section 87219.1(m) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections 87219.1(m)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

Section 87219.1(n)

Specific Purpose:

The purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a “simplified exemption.”

Factual Basis:

This regulation is necessary to implement Health and Safety Code Section 1569.17(c)(4) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual's history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 87219.1(d) through (l).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

Section 87219.1(n)(1)

Specific Purpose:

The purpose of this section is to state that if the individual's criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 87219.1(o) of these proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

Factual Basis:

This section is necessary because if the individual's criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not include this type of evaluation, therefore the standard exemption process would be more appropriate.

Sections 87219.1(n)(2) through (4)

Specific Purpose:

The purpose of this section is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 87219.1(o)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Section 87219.1(p) et seq. [Renumbered from Section 87219.1(h) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87219.1(h), to make grammatical changes and to delete the word "prospective."

Factual Basis:

Section 87219.1(h) is renumbered to Section 87219.1(p) for consistency of format with the restructuring of Section 87219.1. In addition, grammatical changes are made for clarity.

Deletion of "prospective" is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 87219(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility.

Existing Handbook Section 87219.1(i) et seq.

Specific Purpose:

The specific purpose of this amendment is to repeal Handbook Section 87219.1(i) et seq. that references non-exemptible crimes in Health and Safety Code Section 1569.17(f) and Penal Code Section 667.5(c).

Factual Basis:

This amendment is necessary because this handbook is outdated, incomplete and confusing as it is difficult to decipher which specific crimes are non-exemptible. A comprehensive list with specific crime names is included in the new Handbook Sections 87219.1(m)(1) through (52).

Section 87219.1(q)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1569.58(h) and the procedure to follow when that time limit expires. This section establishes the limits for an individual who was excluded due to a denied exemption and for an individual who was excluded because he/she was convicted of a non-exemptible crime.

Section 87219.1(q)(1)

Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual's subsequent exemption request coincides with the exclusion limit set forth in Section 87219.1(q). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and

provide an incentive to do so.

Section 87219.1(q)(2)

Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

Section 87219.1(q)(3)

Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Final Modification:

In response to public testimony, this section is amended to change, "in its discretion," to "in accordance with" the provisions in Sections 87219.1 et seq.," to grant or deny the subsequent request for an exemption.

Section 87219.1(q)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Section 87219.1(r) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications for clarity, were previously at Section 87219.1(f) et seq., with the exception of new Section 87219.1(r)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9188 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

Section 87219.1(r)(1) is amended to reflect the current form revision date (9/03) for the LIC 9188.

Section 87219.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a DUI violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current laws and regulations before a transfer is considered.

Section 87219.1(t)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the licensee and the individual, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 87219.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Section 87219.1(u) et seq.

Specific Purpose:

The specific purpose of this section is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure

that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Section 87219.1(v) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on the assumption that the individual is rehabilitated and of good character not only for the instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Section 87219.1(w) et seq.

Specific Purpose:

The specific purpose of these sections is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Final Modification:

In response to public testimony, this section is amended for clarity by indicating the type of “administrative action” taken would depend on whether the individual were a applicant,

licensee, spouse or dependant family member who resides in the facility, or an employee. If the Department rescinds a license applicant's exemption, the administrative action would be an license denial. If the Department rescinds a licensee's exemption, or the emption of a spouse or dependant family member who resides in the facility, the administrative action would be a license revocation. If the Department rescinds an employee's exemption, the administrative action would be an employee exclusion.

Section 87219.1(x)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients. The administrative action process such as revocation of the license (Health and Safety Code Section 1550) or exclusion action process (Health and Safety Code Section 1558) will provide the individual with a hearing to contest the Department's action.

Final Modification:

See Final Modification for Section 87219.1(w) et seq.

Section 87454(b) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert this section from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not obtained a Department of Justice clearance or a criminal record exemption prior to their employment, residence or initial presence in the facility. Also, Section 87454(b)(1) is renumbered to Section 87454(b)(2).

Factual Basis:

This amendment is necessary because with the new requirement of Department of Justice clearance or a criminal record exemption prior to an individual's employment, residence or initial presence in the facility [Section 87219(e)], these sections must be amended to coincide with that requirement. Also, Section 87454(b)(1) is renumbered to Section 87454(b)(2) to allow for the adoption of new Section 87454(b)(1).

Final Modification:

This section is amended to coincide with the definition name change from “Department of Justice Clearance” to “California Clearance.” In addition, Section 87454(b)(1) is repealed in response to public testimony and Section 87564(b)(1)(A) renumbered to Section 87864(b)(1) for consistency in numbering.

Section 87565(g) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert this section from a requirement that an individual sign a criminal record statement pending receipt of a criminal record transcript to a requirement that an individual obtain a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual’s employment [Section 87219(e)], these sections must be amended to coincide with that requirement.

The requirement that an individual sign a Criminal Record Statement and the subsections [Section 87565(g)(1) and (2)], that state what an individual must declare on the Criminal Record Statement, have been deleted from this location but are added to Section 87219(d)(1).

Final Modification:

Section 87565(g)(1) is amended to coincide with the definition name change from “Department of Justice Clearance” to “California Clearance.”

Section 87566(a)

Specific Purpose:

The specific purpose of this amendment is to replace the term “employment application forms” with the term “personnel records,” add licensee and administrator to those whose records must be maintained and delete “available to the Department or licensing agency for review” from this location.

Factual Basis:

This amendment is necessary for clarity. Personnel records is a more appropriate term as items in Sections 87566(a)(1) through (13) are not all employment application forms. The requirement that all personnel forms be available to the licensing agency for review can now be found in new Section 87566(e).

Section 87566(a)(11) [Renumbered from Section 87566(b)]

Specific Purpose:

The specific purpose of this amendment is to, delete qualifying information as to who must submit a health screening, delete the requirement of a health statement for volunteers from this location, and to renumber Section 87566(b).

Factual Basis:

With the proposed amendments in Section 87566(a), a health screening can now be a subsection of Section 87566(a) and specifying licensee, employees and administrator is unnecessary. Volunteer requirements have been moved to the new proposed Section 87566(b). Existing Section 87566(b) is renumbered to Section 87566(a)(11) to make the health screening a subsection of Section 87566(a).

Section 87566(a)(12)

Specific Purpose:

The specific purpose of this section is to add hazardous health condition documents to the list of records that must be maintained on the licensee, administrator and all employees.

Factual Basis:

This section is necessary to clarify where hazardous health condition documents are to be maintained. Section 87565(f) requires that all personnel obtain a health screening including a chest x-ray or intradermal test. The section further requires that a report be made of each screening, signed by a physician, that indicates whether the person has any condition that would create a hazard to himself/herself, other staff members or residents. This would include tuberculosis screening documents. However, the term “hazardous health condition documents” is used to encompass reports of any condition that is hazardous, not only tuberculosis.

Section 87566(a)(13) et seq.

Specific Purpose:

The specific purpose of these sections is to add a signed criminal record statement and documentation of a criminal record clearance or exemption to the list of records that must be maintained in the employee's personnel record.

Factual Basis:

These sections are necessary for clarity. Section 87219(d) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. These sections only clarify where that statement must be maintained. In addition, Section 87219(h) requires that this documentation be kept in the individual's personnel file. These sections repeat that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee's personnel file.

Final Modification:

In response to testimony, Sections 87566(a)(13)(A) and (B) are amended for clarity.

Section 87566(a)(13)(B)1. [New]

Specific Purpose

The specific purpose of this section is to clarify that a current and valid Administrator's Certificate is sufficient documentation of a clearance or an exemption.

Factual Basis

At the Department's discretion this subsection is added to address the unique situation of background check documentation for Certified Administrators. The Administrator Certification program is administered by this Department. Individuals applying for an administrator's certificate are background checked by the Department and must have either a clearance or an exemption before certification is approved. Documentation of either a clearance or an exemption is maintained by the Administrator Certification program and is not given to the individual nor to the licensee who subsequently hires the individual. The Department inadvertently left this subsection out. The omission was brought to the Department's attention by field staff.

Section 87566(b) et seq.

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All documents listed are required by other sections. These sections repeat those requirements so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Final Modification:

In response to public testimony, Sections 87566(b)(3)(A) and (B) are amended by inserting appropriate cross references for clarity.

Section 87566(f)

Specific Purpose:

The specific purpose of this section is to add a subdivision specifying that personnel records be maintained at the facility and be available for review.

Factual Basis:

This section is necessary for clarity and consistency with other like regulation sections proposed in this regulations package. The phrase "shall be available to the licensing agency for review" was previously in Section 87566(a).

Section 87566(f)(1)

Specific Purpose:

The specific purpose of this section is to state that a licensee may retain personnel records in a central location if they are made available upon request.

Factual Basis:

The Department acknowledges that large facilities or licensees with numerous licensed sites retain personnel files in a central administrative location. This section states that this practice is acceptable and may continue provided the files are available at the site when the licensing agency requests so.

Section 87566(g) [Renumbered from Section 87566(f)]

Specific Purpose:

The specific purpose of this section is to renumber Section 87566(f).

Factual Basis:

Section 87566(f) is renumbered to Section 87566(g) for consistency of format with the restructuring of Section 87566.

Section 87801(c)(10) et seq.

Specific Purpose:

The specific purpose of these sections is to define the term “conviction.”

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations state the actions that the Department is required to take if the Department learns that an individual has been “convicted” of a crime.

Final Modification:

This section is renumbered to Section 87801(c)(11) for consistency of format.

Section 87801(c)(11)

Specific Purpose:

The specific purpose of this section is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether they have a “criminal record clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a DOJ and an FBI clearance.

Final Modification:

This section is renumbered to Section 87801(c)(11) for consistency of format.

Section 87801(c)(12) [Renumbered from Section 87801(c)(10)]

Specific Purpose:

The specific purpose of this section is to renumber Section 87801(c)(10).

Factual Basis:

Section 87801(c)(10) is renumbered to Section 87801(c)(12) for consistency of format with the adoption of new Sections 87801(c)(10) and (11).

Final Modification:

This section is renumbered to Section 87801(c)(13) for consistency of format.

Section 87801(d)(4)

Specific Purpose:

The specific purpose of this section is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 87801(c)(11) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Final Modification:

This section is renumbered to Section 87801(c)(1) because throughout the entire regulations all references to “Department of Justice Clearance” are amended to “California Clearance.” The definition was renamed “California Clearance” at the request of the Department of Justice.

Sections 87801(d)(5) through (13) [Renumbered from Sections 87801(d)(4) through (12)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87801(d)(4) through (12).

Factual Basis:

Sections 87801(d)(4) through (12) are renumbered to Sections 87801(d)(5) through (13) for consistency of format with the adoption of new Section 87801(d)(4).

Final Modification:

This section is renumbered to Section 87801(d)(4) through (12) for consistency of format with the removal of the “Department of Justice Clearance” from this subsection.

Section 87801(f)(2)

Specific Purpose:

The specific purpose of this section is to define the term a Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 87801(c)(11) includes a “Federal Bureau of Investigation (FBI) clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Federal Bureau of Investigation (FBI) clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Federal Bureau of Investigation (FBI) clearance” is issued.

Section 87801(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because Section 87819(b) states that a medical professional, under certain conditions is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 87801(m)(2) [Renumbered from Section 87801(m)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87801(m).

Factual Basis:

Section 87801(m) is renumbered to Section 87801(m)(2) for consistency of format with the adoption of new Section 87801(m)(1).

Section 87801(r)(2)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. Therefore, it is important to provide a definition for those who may be affected.

Final Modification:

This definition is amended in response to public testimony to include efforts to reestablish good character since the date of the last conviction, including but not limited to education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service.

Sections 87801(r)(3) through (5) [Renumbered from Sections 87801(2) through (4)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87801(r)(2) through (4).

Factual Basis:

Sections 87801(r)(2) through (4) are renumbered to Sections 87801(r)(3) through (5) for consistency of format with the adoption of new Section 87801(r)(2).

Section 87801(s)(4)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual's rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Sections 87801(s)(5) through (10) [Renumbered from Sections 87801(s)(4) through (9)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87801(s)(4) through (9).

Factual Basis:

Sections 87801(s)(4) through (9) are renumbered to Sections 87801(s)(5) through (10) for consistency of format with the adoption of new Section 87801(s)(4).

Section 87819(a)(2) et seq.

Specific Purpose/Factual Basis:

These sections are amended to clarify that a transfer may be requested by an applicant or a licensee; to correct the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add the phrase "to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 87819(a)(3)

Specific Purpose:

The purpose of this amendment is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual's statement regarding his/her criminal history be on the LIC 508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 80019(e) is amended to require that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is not printed in the California Code of Regulations or the Department's MPPAnnual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87819(a)(3)(A) et seq.

Specific Purpose:

The specific purpose of these sections is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

This section was previously in Section 87865(j). This is necessary because it is logical to place the section that specifies what must be declared on a Criminal Record Statement directly following the requirement that an individual sign a Criminal Record Statement.

Final Modification:

In response to public testimony, Section 87819(a)(3)(A) is amended to clarify that a person signing a LIC 508 must declare whether they were ever convicted of a crime other than a minor traffic violation regardless if a pardon was granted for the conviction, receipt of an expungement pursuant to Penal Code Section 1203.4 or the conviction sealed as the result of a court order.

Section 87819(a)(4)

Specific Purpose/Factual Basis:

This section is amended to make editorial corrections for consistency and clarity.

Existing Section 87819(a)(4)(B) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that allows for citation for failure to submit fingerprints.

Factual Basis:

These sections are no longer necessary in light of the new requirement [Section 87819(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Sections 87819(a)(4)(B) and (a)(4)(B)1. (New)

Specific Purpose:

The specific purpose of these sections is to clarify that a licensee or license applicant may not submit fingerprints for individuals who are not or will not be associated with his or her facility.

Factual Basis

This section is necessary to prevent licensees from allowing non-licensed entities from using their license number to process background checks on individuals who do not or will not work or reside in their facility. In addition to a violation of statute, this practice creates an undue workload for the Department.

Final Modification:

At the Department's discretion, these sections are repealed. The practice of using a community care license number, by a business not regulated by the Department, or by a licensed facility subject to a processing fee in order to avoid paying a fingerprint fee is only a problem in licensed family child care homes. Therefore, the Department determined that it is unnecessary to include this language in the RCFCI licensing category.

Section 87819(c) et seq.

Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for continued employment.

Factual Basis:

These sections are no longer necessary in light of the new requirement [Section 87819(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Section 87819(c) et seq. [Renumbered from Section 87819(d) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819(d) to (c) and to replace existing fingerprint exempt requirements with current exemptions.

Factual Basis:

This amendment is necessary so that these sections are consistent in wording and order with other like regulation sections of this proposed regulations' package. Recent statutory changes (Health and Safety Code Section 1522(b)(2) affecting other facility types created clearer and more extensive fingerprint exempt situations. Existing fingerprint exemptions are reworded for clarity and thoroughness and placed in an order consistent with other sections proposed by these regulations. Section 87819(d) is renumbered to (c) for consistency of format.

Section 87819(d) et seq.

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819(e) to (d) and to replace existing language with the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

Factual Basis:

This amendment is necessary to implement the requirements of Health and Safety Code Section 1522.04(a). Section 1522.04(a) requires that individuals obtain either a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

Final Modification:

In response to public testimony, this section is amended to clarify that all individuals subject to criminal record review pursuant to Health and Safety Code Section 1568.09 shall prior to working, residing, or volunteering in a licensed facility, receive a California clearance or a criminal record exemption as required by the Department. Also, Section 87819(d)(1) is amended to correctly name "Department of Justice clearance to "California clearance" at the request of the Department of Justice.

Sections 87819(e) and (e)(1)

Specific Purpose:

The specific purpose of this amendment is to state that a violation of 87819(d) will result in an immediate and continued civil penalty.

Factual Basis:

This amendment is necessary because although Section 87854 gives the Department authority to assess civil penalties for failure to correct cited violations of any regulation section, as agreed upon in a plan of correction, statute allows the Department to assess immediate civil penalties for fingerprint violations.

Section 87819(f)

Specific Purpose:

The specific purpose of this amendment is to state that a violation of 87819(d) may result in the denial of a license application or a suspension/revocation of a license

Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Sections 87819(g) and (g)(3) [Renumbered from Sections 87819(f) and (f)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819(f) to Section 87819(g), to delete the word prospective and to make grammatical changes.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 87819(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 87819(f) is renumbered to Section 87819(g) for consistency of format.

Final Modification:

Section 87819(g) is amended to correct an erroneous cross reference.

Sections 87819(h) through (j)

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87819(g) through (i) to Sections 87819(h) through (j).

Factual Basis:

Sections 87819(g) through (i) are renumbered to Sections 87819(h) through (j) for consistency of format.

Section 87819(k)

Specific Purpose:

The specific purpose of this section is to place into regulation the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department, by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1568.09(e). At the conclusion of the investigation, the Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a TSO or immediate exclusion action.

Final Modification:

At the Department's discretion, Section 87819(k) is deleted because it has proven to be problematic and difficult, if not impossible, to enforce. The regulation places the responsibility to report subsequent arrests and convictions on the person with an exemption who may or may not be a licensee. If an individual who is not a licensee violates the regulation, the Department could not cite the individual nor take action against the licensee for the individual's non-compliance.

Additionally, Department of Justice reporting time has increased dramatically making the need for the individual to self-report unnecessary.

Section 87819(k)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e., facility removal and/or exemption application or administrative action).

Final Modification:

At the Department's discretion this section is repealed. [See Final Modification for Section 87819(k) above.

Section 87819(l) [Relettered to (k) Post-hearing]

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement at proposed Section 87819(k) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information. Without the authority to verify the information about the event, obtaining the information from the individual would be useless.

Final Modification:

In response to public testimony, this section is amended by adding the phrase "from a law enforcement agency or court" for clarity. Also, Section 87819(l) is changed to Section 87819(k) for consistency of format.

Section 87819(l)(1) [Relettered to (k)(1) Post-hearing]

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the Department of Justice. With the new requirement in proposed Section 87819(k) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then to supply the Department with additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the event, obtaining the information would be useless.

Final Modification:

In response to public testimony, this section is amended by adding "from a law enforcement agency or court" for clarity. Also, Section 87819(l)(1) is changed to (k)(1).

Section 87819.1(a) et seq.

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in these subsections. The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care. These sections are necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 87819.1(b)

Specific Purpose:

The specific purpose of this section is to require that the licensee confirm within five days,

that the individual has been removed.

Factual Basis:

This section is necessary so that the Department will have positive confirmation that the individual has been removed. Individuals who are ordered removed are individuals who have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 87819.1(b)(1)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual’s removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual’s name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, Rev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

This section is amended to reflect the current forms’ revision dates (9/03).

Section 87819.1(c) [Renumbered from Section 87819.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819.1(a) to Section 87819.1(c) and to repeal out-of-date cross-references.

Factual Basis:

This amendment to renumber is necessary for consistency of format with the addition of new Sections 87819.1(a) and (b). Also, the cross-references are being repealed for consistency and clarity with the restructuring of Section 87819 by these regulations.

Sections 87819.1(d) and (d)(1)

Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption.

Factual Basis:

These sections are necessary as a precursor to existing Section 87819.1(c), now renumbered to Section 87819.1(g), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written request for the exemption, the individual's personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual's rehabilitation.

Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Additionally, since adoption of these regulations, the Department had extended the time allowed to submit an exemption request and required documents from 30 days to 45 days to allow individuals additional time to obtain court documents verifying that their probation was informal. Finally, Section 87819.1(d)(1) is amended, at the Department's discretion, to specifically note that the documents the Department will request include police reports and certified court documents.

Sections 87819.1(d)(2) and (d)(3)

Specific Purpose:

The specific purpose of these sections is to state what action the Department will take if the documents, requested by the Department by written notice, are not submitted within 30 days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Additionally, since adoption of these regulations, the Department had extended the time allowed to submit an exemption request and required documents from 30 days to 45 days.

Section 87819.1(d)(4)

Specific Purpose

The specific purpose of this amendment is to add individual exemption criteria.

Factual Basis

This section is added at the Department's discretion. This section was not included originally because the Department proposed, through AB 1240, to delete individual exemptions. The provision to repeal individual exemptions was amended out of the language of AB1240 on January 22, 2004.

Sections 87819.1(e) and (e)(1) [Renumbered from Sections 87819.1(b) and (b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819.1(b) to Section 87819.1(e) and to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

These sections are necessary for consistency of format and clarity. Renumbering Section 87819.1(b) to Section 87819.1(e) is necessary with the addition of new Sections 87819.1(a), (b) and (d). The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 87819.1(e)(6)(A)

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E.

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Final Modification:

This section is amended to reflect the current form revision date (7/03).

Section 87819.1(e)(8)(A)1.

Specific Purpose:

The specific purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03.

Factual Basis:

The LIC 508 was revised in January 2003 to agree with new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87819.1(f) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

Factual Basis

These sections are necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding these sections makes it clear to the affected individual that this is considered.

Sections 87819.1(g) through (i) [Renumbered from Sections 87819.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87819.1(c) through (e).

Factual Basis:

Sections 87819.1(c) through (e) are renumbered to Sections 87819.1(g) through (i) for consistency of format with the adoption of new Sections 87819.1(a), (b), (d) and (f).

Section 87819.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87819.1(f) et seq. from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 87819.1(r).

Section 87819.1(g) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87819.1(g) from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 87819.1(t).

Section 87819.1(h) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87819.1(h) et seq. from this location.

Factual Basis:

The language in these sections, with slight modifications, can be found in new Section 87819.1(p).

Handbook Sections 87819.1(i) through (o)

Specific Purpose:

The specific purpose of this amendment is to repeal handbook sections that reference nonexemptible crimes in the Health and Safety Code and the Penal Code.

Factual Basis:

This amendment is necessary because this handbook section is outdated, incomplete and confusing because it is difficult to decipher which specific crimes are nonexemptible. A comprehensive list with specific crime names is included in the proposed new Handbook Sections 87819.1(m)(1) through (52).

Sections 87819.1(j) and (j)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because existing regulation Section 87819.1(b)(8), now renumbered to Sections 87819.1(e)(8), includes “evidence of honesty and truthfulness” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor, that is truthful and consistent with their criminal history. Additionally, the Department has encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. These sections will allow the Department to deny or rescind an exemption if it cannot obtain honest statements supported by the individual’s criminal history or if it becomes aware that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

Section 87819.1(j)(2)

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual

has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate successful completion of these terms before being deemed rehabilitated.

Section 87819.1(j)(2)(A)

Specific Purpose:

The specific purpose of this section is to state that if an individual did not receive formal probation, the Department may consider granting a criminal record exemption.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and may consider granting a criminal record exemption.

Section 87819.1(k)

Specific Purpose:

The specific purpose of this section is to introduce the following seven subsections that list specific criteria that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

Factual Basis:

This section is necessary to protect the health and safety of clients in care and to outline for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1568.09(g) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 87819.1(e) (Renumbered from Section 87819.1(b) by these proposed regulations) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions, the more years are required since the last period of incarceration, probation or parole before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

#### Section 87819.1(k)(1)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or probation before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation is a part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and noncriminal activity on their own for at least one year since incarceration or completing probation without it being required for compliance with their probation term and without the supervision of a probation officer.

Requiring one year beyond incarceration or probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year since completing probation is minimal and vital. If an individual can demonstrate one year since incarceration or probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

#### Section 87819.1(k)(2)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal

record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87819.1(k)(3)

Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole.

An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

#### Section 87819.1(k)(4)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

#### Section 87819.1(k)(5)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87819.1(k)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person.

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

Final Modification:

At the Department's discretion, this section is amended to state that the Department will consider granting an exemption to an individual convicted of one or more violent felonies if 15 years have passed since the last period of incarceration, probation or parole.

Section 87819.1(k)(7)

Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in Sections

87819.1(k)(1) through (5) will begin from the last date of conviction.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

Section 87819.1(l)

Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the criteria specified in Sections 87819.1(k)(1) through (6) is rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without a subsequent criminal activity, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

Section 87819.1(m) and Handbook Sections 87819.1(m)(1) through (52)

Specific Purpose:

The specific purpose of Section 87819.1(m) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1568.09(f)(1) will not be granted a criminal record exemption. Also, Health and Safety Code Section 1596.871(f) is added as handbook for easy reference by users.

Factual Basis:

Section 87219.1(m) is necessary to implement and clarify the provisions of Health and Safety Code Section 1568.09(f)(1) which prohibits the Department from granting exemptions to

individuals who have been convicted of specific crimes. This nonexemptible crimes list, previously located in Handbook Sections 87819.1(i) through (o), has been updated to reflect current statute. Handbook Sections 87819.1(m)(1) through (52) provide the Health and Safety Code referenced in Section 87219.1(m) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections 87819.1(m)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

#### Section 87819.1(n)

##### Specific Purpose:

The specific purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a “simplified exemption.”

##### Factual Basis:

This section is necessary to implement Health and Safety Code Section 1568.09(c)(5) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual’s history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 87819.1(d) through (l).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

#### Section 87819.1(n)(1)

##### Specific Purpose:

The purpose of this section is to state that if the individual’s criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 87819.1(o) of these proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

Factual Basis:

This section is necessary because if the individual's criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not include this type of evaluation, therefore the standard exemption process would be more appropriate.

Sections 87819.1(n)(2) through (4)

Specific Purpose:

The purpose of these sections is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 87819.1(o)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Section 87819.1(p) et seq.

Specific Purpose:

The specific purpose of these sections is to state what subsequent action the Department will take if a criminal record exemption is denied or cannot be granted.

Factual Basis:

These sections, with slight grammatical changes for clarity and consistency with other like regulation sections, were the previous Section 87819.1(h).

Section 87819.1(q)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1568.093 and the procedure to follow when that time limit expires. This section establishes the limits for an individual who was excluded due to a denied exemption and for an individual who was excluded because he/she was convicted of a non-exemptible crime.

Section 87819.1(q)(1)

Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual's subsequent exemption request coincides with the exclusion limit set forth in Section 87819.1(q). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and provide an incentive to do so.

Section 87819.1(q)(2)

Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

Section 87819.1(q)(3)

Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Final Modification:

In response to public testimony, this section is amended to change, "in its discretion," to "in accordance with" the provisions in Sections 87819.1 et seq.," to grant or deny the subsequent request for an exemption.

Section 87819.1(q)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Sections 87819.1(r) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications for clarity, were previously at Section 87819.1(f) et seq., with the exception of new Section 87819.1(r)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9188 are incomplete and require that the

Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

Section 87819.1(r)(1) is amended to reflect the current form revision date (9/03) for the LIC 9188.

Sections 87819.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example if the individual was convicted of a DUI violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current law and regulation before a transfer is considered.

Section 87819.1(t)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the licensee and the individual, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 87819.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Sections 87819.1(u) et seq.

Specific Purpose:

The specific purpose of these sections is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Sections 87819.1(v) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on the assumption that the individual is rehabilitated and of good character not only for the instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Sections 87819.1(w) et seq.

Specific Purpose:

The specific purpose of this section is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Final Modification:

In response to public testimony, this section is amended for clarity by indicating the type of “administrative action” taken would depend on whether the individual were a applicant, licensee, spouse or dependant family member who resides in the facility, or an employee. If the Department rescinds a license applicant’s exemption, the administrative action would be an license denial. If the Department rescinds a licensee’s exemption, or the emption of a spouse or dependant family member who resides in the facility, the administrative action would be a license revocation. If the Department rescinds an employee’s exemption, the administrative action would be an employee exclusion.

Section 87819.1(x)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients. The administrative action process such as revocation of the license (Health and Safety Code Section 1568.082) or exclusion action process (Health and Safety Code Section 1568.092) will provide the individual with a hearing to contest the Department’s action.

Final Modification:

In response to public testimony, this section is amended for clarity. [Please see Final Modification for Section 87819.1(w).]

Sections 87854(b), (b)(1) and (b)(1)(A)

Specific Purpose:

The specific purpose of this amendment is to convert this section from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not obtained a Department of Justice clearance or a criminal record exemption prior to their employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of Department of Justice clearance or a criminal record exemption prior to an individual's employment, residence or initial presence in the facility [Section 87819(d)], this section must be amended to coincide with that requirement.

Final Modification:

This section is amended to coincide with the name change from "Department of Justice Clearance" to "California Clearance." Section 87854(b)(1) is deleted in response to public testimony and Section 87854(b)(1)(A) is renumbered to Section 87854(b)(1).

Section 87854(b)(2) [Renumbered from Section 87854(b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87854(b)(1) to Section 87854(b)(2).

Factual Basis:

Section 87854(b)(1) is renumbered to Section 87854(b)(2) for consistency of format.

Section 87861(c)(3)(B)

Specific Purpose:

The specific purpose of this amendment is to delete the word "cards".

Factual Basis:

This amendment is necessary because fingerprint cards are not the only method used to submit fingerprints. The Department recommends an electronic method of submitting fingerprint images.

Section 87865(j) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert these sections from a requirement that an individual sign a criminal record statement pending receipt of a criminal record transcript to a requirement that an individual obtain a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or a criminal record exemption prior to an individual's employment [Section 87819(d)], these sections must be amended to coincide with that requirement.

The requirement that an individual sign a Criminal Record Statement and the subsections [Sections 87865(j)(1) and (2)], that state what an individual must declare on the Criminal Record Statement, have been deleted from this location but are added to Section 87819(d)(1).

Final Modification:

This section is amended to coincide with the name change from "Department of Justice Clearance" to "California Clearance."

Section 87866(a)

Specific Purpose:

The specific purpose of this amendment is to replace the term "employment application forms" with the term "personnel records," add licensee and administrator to those whose records must be maintained and repeal the phrase "available to the Department for review" from this location.

Factual Basis:

This amendment is necessary for clarity. Personnel records is a more appropriate term as items in Sections 87866(a)(1) through (14) are not all employment application forms. The requirement that all personnel forms be available to the licensing agency for review can now be found in Section 87866(d).

Section 87866(a)(12)

Specific Purpose:

The specific purpose of this section is to add documentation of a criminal record clearance or exemption to the list of records that must be maintained in the licensee, administrator and employee's personnel record.

Factual Basis:

This section is necessary for clarity. Section 87819(i) requires that this documentation be kept in the individual's personnel file. This section repeats that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee's personnel file.

Final Modification:

In response to public testimony, this section is amended by adding the phrase “as required by Section 87819(d)” for clarity.

Section 87866(a)(13) [Renumbered from Section 87866(b)]

Specific Purpose:

The specific purpose of this amendment is to, delete qualifying information as to who must submit a health screening, delete the requirement of a health statement for volunteers from this location, and to renumber Section 87866(b).

Factual Basis:

With the proposed amendments in Section 87866(a), a health screening can now be a subsection of Section 87866(a) and specifying licensee, employees and administrator is unnecessary. Volunteer requirements have been moved to the new proposed Section 87866(b). Existing Section 87866(b) is renumbered to 87866(a)(13) to make the health screening a subsection of Section 87866(a).

Section 87866(a)(14)

Specific Purpose:

The specific purpose of this section is to add tuberculosis test documents to the list of records that must be maintained on the licensee, administrator and all employees.

Factual Basis:

Tuberculosis test documents must be listed separately for clarity and emphasis. Tuberculosis tests are usually performed separate from a health screening. The health screening form provided by the Department includes limited space for a positive or negative tine test. Complete tuberculosis test documents could include results of a chest x-ray and/or other follow-up reports.

Section 87866(b) et seq.

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All documents listed are required by other sections. These sections repeat those requirements so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Final Modification:

In response to public testimony, Sections 87866(b)(3)(A) and (B) are amended by adding the phrases "as required by Section 87819(a)(3)" and "as required by Section 87819(d)," respectively, for clarity.

Existing Section 87866(c) (Repealed)

Section 87866(c) [Renumbered from Section 87866(d)]

Specific Purpose:

Existing Section 87866(c) is repealed. Also, Section 87866(d) is being renumbered to Section 87866(c).

Factual Basis:

The repeal of existing Section 87866(c) is necessary for consistency. Also, the renumbering of Section 87866(d) to (c) is necessary for consistency of format with the repeal of existing Section 87866(c).

Section 87866(d) [Renumbered from Section 87866(e)]

Specific Purpose:

The specific purpose of this amendment is to add the phrase "and be available to the licensing agency for review" that was repealed in Section 87866(a) above. Also, this section is renumbered.

Factual Basis:

This section is necessary for clarity and consistency. The phrase "be available to the Department (licensing agency) for review" that is proposed for repeal in Section 87866(a) above, is added to the existing language here as it logically follows that personnel records at the facility should be available to the licensing agency. Also, the renumbering of this section is necessary for consistency of format with the repeal of existing Section 87866(c).

Section 87866(e) [Renumbered from Section 87866(f)]

Specific Purpose/Factual Basis:

This amendment renumbers Section 87866(f) to (e) for consistency of format with the repeal of existing Section 87866(c).

Section 101152(c)(4)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index.”

Factual Basis:

This section is necessary to place this definition into regulation because existing regulations state that all license applicants, employees and adults associated with a licensed facility must submit a Child Abuse Central Index form so that the Department may conduct a search of the Child Abuse Central Index. This definition is taken from the definition of the Child Abuse Central Index within the California Department of Justice produced brochure, dated 2000, about the Child Protection Program.

Final Modification:

This section is renumbered to Section 101152(c)(5) for consistency of format.

Section 101152(c)(5)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility that cares for children depends upon whether the individual has a “Child Abuse Central Index clearance.” In addition, clients or persons who are placing clients in facilities that care for children and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand what a clearance means when a “Child Abuse Central Index clearance” is issued.

Final Modification:

This section is renumbered to Section 101152(c)(6) for consistency of format.

Sections 101152(c)(6) through (11) [Renumbered from Sections 101152(c)(4) through (9)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 101152(c)(4) through (9).

Factual Basis:

Sections 101152(c)(4) through (9) are renumbered to Sections 101152(c)(6) through (11) for consistency of format with the adoption of new Sections 101152(c)(4) and (5).

Final Modification:

These sections are renumbered to Sections 101152(c)(7) through (c)(12), respectively, for consistency of format.

Section 101152(c)(12) et seq.

Specific Purpose:

The specific purpose of these regulations is to define the term “conviction.”

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations state the actions that the Department is required to take if the Department learns that an individual has been “convicted” of a crime.

Final Modification:

This section is renumbered to Section 101152(c)(13) for consistency of format.

Section 101152(c)(13)

Specific Purpose:

The specific purpose of this section is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a “criminal record clearance.”

In addition, clients or persons who are placing clients in community care facilities and who

depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a DOJ and an FBI clearance.

Final Modification:

This section is renumbered to Section 101152(c)(14) for consistency of format.

Section 101152(d)(3)

Specific Purpose:

The specific purpose of this section is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in proposed Section 101152(c)(13) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Final Modification:

This section is renumbered to Section 101152(c)(1) because throughout the entire regulations all references to “Department of Justice Clearance” are amended to “California Clearance.” The definition was renamed “California Clearance” at the request of the Department of Justice.

Sections 101152(d)(4) and (5) [Renumbered from Sections 101152(d)(3) and (4)]

Specific Purpose:

The specific purpose of these sections is to renumber Sections 101152(d)(3) and (4).

Factual Basis:

Sections 101152(d)(3) and (4) are renumbered to Sections 101152(d)(4) and (5) for consistency of format with the adoption of new Section 101152(d)(3).

Final Modification:

These sections are renumbered to Sections 101152(d)(3) and (4) for consistency of format with the renumbering of a “California clearance” to Section 101152(c)(1).

Section 101152(f)(1)

Specific Purpose:

The specific purpose of this section is to define the term “Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 101152(c)(13) includes an FBI clearance. In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of an FBI clearance. It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when an FBI clearance is issued.

Section 101152(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because Section 101170(b) states that a medical professional, under certain conditions is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 101152(m)(2) [Renumbered from Section 101152(m)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101152(m)(1).

Factual Basis:

Section 101152(m)(1) is renumbered to Section 101152(m)(2) for consistency of format with the adoption of new Section 101152(m)(1).

Section 101152(r)(1)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. It is important to provide a definition for those who may be affected.

Final Modification:

This definition is amended in response to public testimony, to include efforts to reestablish good character since the date of the last conviction, including but not limited to education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service.

Section 101152(r)(2) [Renumbered from Section 101152(r)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101152(r)(1).

Factual Basis:

Section 101152(r)(1) is renumbered to Section 101152(r)(2) for consistency of format with the adoption of new Section 101152(r)(1).

Section 101152(s)(4)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual’s rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Section 101152(s)(5) [Renumbered from Section 101152(s)(4)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101152(s)(4).

Factual Basis:

Section 101152(s)(4) is renumbered to Section 101152(s)(5) for consistency of format with the adoption of new Section 101152(s)(4).

Sections 101170(a)(2)(D)(i) through (iv) (Handbook)

Specific Purpose:

The specific purpose of this amendment is to repeal the volunteer fingerprint exemption criteria from handbook.

Factual Basis:

These sections are repealed because this volunteer exemption language was amended by Senate Bill (SB), Chapter 819, Statutes of 2000.

Section 101170(b) et seq.

Specific Purpose:

The purpose of these sections is to place into regulation additional fingerprint exempt individuals and situations.

Factual Basis:

Senate Bill (SB) 1992, Chapter 819, Statutes of 2000, added a provision that allows the Department to define additional fingerprint exempt individuals similar to those defined in Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv). The additional exempt individuals and situations are not only similar to Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv), but are virtually identical to other like Health and Safety Code Sections and regulation sections for other community care facility types. For easy reference the individuals and situations specified in Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv) are included in these proposed subsections making this an inclusive list of all exempt individuals and situations.

Section 101170(c) [Renumbered from Section 101170(b)]

Specific Purpose:

This section is amended to renumber Section 101170(b) to (c).

Factual Basis:

Section 101170(b) is renumbered to Section 101170(c) for consistency of format with the adoption of new Section 101170(b).

Section 101170(d) [Renumbered from Section 101170(c)]

Specific Purpose:

The specific purpose of this amendment is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual's statement regarding his/her criminal history be on the LIC 508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 101170(e) is amended to require that all individuals subject to a criminal record review have a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev. 1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 101170(d)(1) et seq. (New)

Specific Purpose:

The specific purpose of these sections is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

These sections were previously in Section 101216(i). This amendment is necessary because it is logical to place the section that specifies what an individual must declare on a Criminal Record Statement directly following the requirement that an individual sign a Criminal Record Statement.

Final Modification:

In response to public testimony, Section 80019(d)(1)(A) is amended to clarify that a person signing a LIC 508 must declare whether they were ever convicted of a crime other than a minor traffic violation regardless if a pardon was granted for the conviction, receipt of an expungement pursuant to Penal Code Section 1203.4 or the conviction sealed as the result of a court order.

Section 101170(d)(2)[Renumbered from Section 101170(d)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170(d)(1), make a grammatical change and to correct a cross-reference.

Factual Basis:

Section 101170(d)(1) is renumbered to Section 101170(d)(2) for consistency of format with addition of a new Section 101170(d)(1) [previously Section 101216(i)]. The grammatical and cross-reference amendments are for clarity and accuracy.

Sections 101170(d)(2)(B) and (d)(2)(B)1.

Specific Purpose:

The specific purpose of this amendment is to repeal language that allows for citation for failure to submit fingerprints and to convert the section to a requirement that a licensee or license applicant not submit fingerprints for individuals who are not or will not be associated with his or her facility.

Factual Basis:

This requirement is no longer necessary in light of the new requirement [Section 101170(e)] that all individuals subject to a criminal record review have a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in the facility. The new language is necessary to prevent licensees from allowing non-licensed entities from using their license number to process background checks on individuals who do not or will not work or reside in their facility. In addition to a violation of statute, this practice creates an undue workload for the Department.

Final Modification:

At the Department's discretion, these sections are repealed. The practice of using a community care license number, by a business not regulated by the Department, or by a licensed facility subject to a processing fee in order to avoid paying a fingerprint fee is only a problem in licensed family child care homes. Therefore, the Department determined that it was unnecessary to include this language in the child care center licensing category.

Section 101170(d)(2)(B)2. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement that the licensee submit fingerprints to the Department of Justice after citation for failure to do so.

Factual Basis

With the requirement of a Department of Justice clearance prior to initial presence in the facility [Section 101170(e)], this requirement is unnecessary.

Section 101170(d)(2) et seq. [Renumbered from Section 101170(c)(2) et seq.] (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for continued employment.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 101170(e)] that all individuals subject to a criminal record review have a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in the facility.

Section 101170(e) et seq. [Renumbered from Section 101170(d) et seq.]

Specific Purpose:

The specific purpose of this amendment is to replace existing language with the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

Factual Basis:

This amendment is necessary to implement the requirements of Health and Safety Code Section 1522.04(a). Section 1522.04(a) requires that individuals obtain either a criminal record clearance or exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

Final Modification:

In response to public testimony, this section is amended to clarify all individuals subject to criminal record review pursuant to Health and Safety Code Section 1596.871 shall prior to working, residing, or volunteering in a licensed facility, receive a California clearance or a criminal record exemption as required by the Department. Section 101170(e)(1) is amended by correctly renaming the “Department of Justice clearance” to “California clearance” as requested by the Department of Justice.

Section 101170(f) et seq. [Renumbered from Section 101170(d)(1) et seq.]

Specific Purpose/Factual Basis:

These sections are amended to clarify that a transfer may be requested by an applicant or a licensee; to correct the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add the phrase "to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Subsection 101170(d)(1) is renumbered to Section 101170(f) due to the restructuring of Section 101170. Subsections 101170(d)(1)(A) through (E) are renumbered to Subsections 101170(f)(1) through (5) for consistency of format.

Section 101170(g)[Renumbered from Section 101170(e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170(e).

Factual Basis:

Section 101170(e) is renumbered to Section 101170(g) for consistency of format.

Sections 101170(h) and (h)(1)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 101170(e) will result in an immediate and continued civil penalty.

Factual Basis:

This adoption is necessary because although Section 101195 gives the Department authority to assess civil penalties for failure to correct cited violations of any regulation section, as agreed upon in a plan of correction, statute allows the Department to assess immediate civil penalties for fingerprint violations.

Section 101170(i)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 101170(e) may result in the denial of a license application or a suspension/revocation of a license.

Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Sections 101170(j) [Renumbered from Section 101170(f)]

Specific Purpose:

The purpose of this amendment is to renumber Section 101170(f).

Factual Basis:

Sections 101170(f) is renumbered to Section 101170(j) for consistency of format.

Sections 101170(k) and (k)(3) [Renumbered from Sections 101170(g) and (g)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170(g) to Section 101170(k), to delete the word prospective and to make grammatical changes.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 101170(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 101170(g) is renumbered to Section 101170(k) for consistency of format.

Section 101170(l) [Renumbered from 101170(h)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170(h) to 101170(l).

Factual Basis:

This amendment is necessary for consistency of format.

Section 101170(m)

Specific Purpose:

The specific purpose of this section is to adopt the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department, by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1596.871(e). At the conclusion of the investigation, the Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a TSO or immediate exclusion action.

Final Modification:

At the Department's discretion, Section 101170(m) is deleted because it has proven to be problematic and difficult, if not impossible, to enforce. The regulation places the responsibility to report subsequent arrests and convictions on the person with an exemption who may or may not be a licensee. If an individual who is not a licensee violates the regulation, the Department could not cite the individual nor take action against the licensee for the individual's non-compliance. Additionally, Department of Justice reporting time has increased dramatically making the need for the individual to self report unnecessary.

Section 101170(m)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e., facility removal and/or exemption application or administrative action).

Final Modification:

At the Department's discretion, Section 101170(m)(1) is deleted. [See Final Modification to Section 101170(m) above.]

Section 101170(n)

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement at proposed Section 101170(m) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information. Without the authority to verify the information about the event, obtaining the information from

the individual would be useless.

Final Modification:

In response to public testimony, this section is amended by adding the phrase “from a law enforcement agency or court” for clarity. Section 101170(n) is relettered to (m) for consistency of format.

Section 101170(n)(1)

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual’s criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the DOJ. With the new requirement at proposed Section 101170(m) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then to supply the Department additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the event, obtaining the information would be useless.

Final Modification:

In response to public testimony, this section is amended by adding the phrase “from a law enforcement agency or court” for clarity. Section 101170(n)(1) is relettered to (m)(1) for consistency of format.

Sections 101170.1(a) and (a)(1) through (5)

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in these subsections. The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care. These sections are necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 101170.1(b)

Specific Purpose:

The specific purpose of this section is to require that the licensee confirm within five days, that the individual has been removed.

Factual Basis:

This section is necessary so that the Department will have positive confirmation that the individual has been removed. Individuals who are ordered removed are individuals who have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 101170.1(b)(1)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual’s removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual’s name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, Rev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

This section is amended to reflect the current form's revision dates (9/03).

Section 101170.1(c) [Renumbered from Section 101170.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170.1(a) to Section 101170.1(c) and to delete the phrase "from Section 101170(e) or (c)(2)."

Factual Basis:

This amendment to renumber is necessary for consistency of format with the addition of new Sections 101170.1(a) and (b).

Sections 101170.1(d) and (d)(1)

Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption.

Factual Basis:

These sections are necessary as a precursor to existing Section 101170.1(c), now renumbered to Section 101170.1(g), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written request for the exemption, the individual's personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual's rehabilitation.

Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Additionally, since adoption of these regulations, the Department has extended the time allowed to submit an exemption request and required documents from 30 days to 45 days to allow individuals additional time to obtain court documents verifying that their probation was informal. Finally, Section 101170.1(d)(1) is amended, at the Department's discretion, to specifically note that the documents the Department will request include police reports and certified court documents.

Sections 101170.1(d)(2) and (3)

Specific Purpose:

The specific purpose of these sections is to state the action the Department will take if the documents, requested by the Department in the written notice, are not submitted within 30 days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Additionally, since adoption of these regulations, the Department had extended the time allowed to submit an exemption request and required documents from 30 days to 45 days.

Section 101170.1(d)(4)

Specific Purpose

The specific purpose of this amendment is to add individual exemption criteria.

Factual Basis

This section is added at the Department's discretion. This section was not included originally because the Department proposed, through AB 1240, to delete individual exemptions. The provision to repeal individual exemptions was amended out of the language of AB1240 on January 22, 2004.

Sections 101170.1(e) and (e)(1)

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170.1(b) to Section 101170.1(e) and to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

These sections are necessary for consistency of format and clarity. Renumbering Section 101170.1(b) to Section 101170.1(e) is necessary with the addition of new Sections 101170.1(a), (b) and (d). The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 101170.1(e)(6)(A)

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E (Rev. 9/02).

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Final Modification:

This section is amended to reflect the current form revision date (7/03).

Section 101170.1(e)(8)(A)1.

Specific Purpose:

The specific purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03.

Factual Basis:

The LIC 508 was revised in January 2003 to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

Section 101170.1(f) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

Factual Basis

This section is necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Sections 101170.1(g) through (i) [Renumbered from Sections 101170.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 101170.1(c) through (e).

Factual Basis:

Sections 101170.1(c) through (e) are renumbered to Sections 101170.1(g) through (i) for consistency of format with the restructuring of Section 101170.1.

Section 101170.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 101170.1(f) et seq. from this location.

Factual Basis:

The language in these sections, with slight modifications, can be found in the new Section 101170.1(s).

Section 101170.1(g)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 101170.1(g) from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 101170.1(t).

Section 101170.1(j) and (j)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because existing regulation Section 101170.1(b)(8), now renumbered to Section 101170.1(e)(8), includes “evidence of honesty and truthfulness.” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor, that is truthful and consistent with their criminal history. Additionally, the Department has

encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. This section will allow the Department to deny or rescind an exemption if it cannot obtain honest statements supported by the individual's criminal history or if it becomes aware that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

#### Section 101170.1(j)(2)

##### Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate successful completion of these terms before being deemed rehabilitated.

#### Section 101170.1(j)(2)(A)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual did not receive formal probation, the Department may consider granting a criminal record exemption.

##### Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and may consider granting a criminal record exemption.

## Section 101170.1(k)

### Specific Purpose:

The specific purpose of this section is to introduce the following seven subsections that list specific criteria that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

### Factual Basis:

This section is necessary to protect the health and safety of clients in care and to provide for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1596.871(f) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 101170.1(e) (Renumbered from Section 101170.1(b) by these proposed regulations) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions, the more years must lapse since the last period of incarceration, probation or parole before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

## Section 101170.1(k)(1)

### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or probation before the Department will consider granting a criminal record exemption.

### Factual Basis:

Probation is a part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if

they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and noncriminal activity on their own for at least one year since incarceration or completing probation without it being required for compliance with their probation term and without the supervision of a probation officer.

Requiring one year beyond incarceration or probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year since completing probation is minimal and vital. If an individual can demonstrate one year since incarceration or probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

#### Section 101170.1(k)(2)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable,

community care clients that the Department has been entrusted to protect, four years without subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

Section 101170.1(k)(3)

Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

#### Section 101170.1(k)(4)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

#### Section 101170.1(k)(5)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 101170.1(k)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person..

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

#### Section 101170.1(k)(7)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in Sections 101170(k)(1) through (5) will begin from the last date of conviction.

##### Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

#### Section 101170.1(l)

##### Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the time requirements specified in Sections 101170.1(l)(1) through (6) is a rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

##### Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without a subsequent criminal activity, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

Section 101170.1(m) and Handbook Sections 101170.1(m)(1) through (52)

Specific Purpose:

The specific purpose of Section 101170.1(m) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1596.871(f) will not be granted a criminal record exemption. Also, a handbook is added.

Factual Basis:

Section 101170.1(m) is necessary to implement and clarify the provisions of Health and Safety Code Section 1596.871(f) which prohibits the Department from granting exemptions to individuals who have been convicted of specific crimes. This nonexemptible crimes list, previously located in Handbook Sections 101170(h)(1), has been updated to reflect current statute. Handbook Sections 101170.1(m)(1) through (52) are added to provide the Health and Safety Code referenced in Section 101170.1(m) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections 101170.1(m)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

Section 101170.1(n)

Specific Purpose:

The specific purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a “simplified exemption.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1596.871(c)(3) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual’s history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 101170.1(c) through (m).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

Section 101170.1(n)(1)

Specific Purpose:

The purpose of this section is to state that if the individual's criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 101170.1(o) of the proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

Factual Basis:

This section is necessary because if the individual's criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not include this type of evaluation, therefore the standard exemption process would be more appropriate.

Sections 101170.1(n)(2) through (4)

Specific Purpose:

The purpose of these sections is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 101170.1(o)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Sections 101170.1(p) et seq. [Renumbered from Section 101170.1(h) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170.1(h), to make grammatical changes and to delete the word "prospective".

Factual Basis:

Section 101170.1(h) is renumbered to Section 101170.1(q) for consistency of format with the restructuring of Section 101170.1. Grammatical changes are made for clarity.

Deletion of "prospective" is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 101170(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility.

Section 101170.1(q)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1596.8897 and the procedure to follow when that time limit expires. This

section establishes the limits for an individual who was excluded due to a denied exemption and for an individual who was excluded because he/she was convicted of a non-exemptible crime.

#### Section 101170.1(q)(1)

##### Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

##### Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual's subsequent exemption request coincides with the exclusion limit set forth in Section 101170.1(q). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and provide an incentive to do so.

#### Section 101170.1(q)(2)

##### Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

##### Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

#### Section 101170.1(q)(3)

##### Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Final Modification:

In response to public testimony, this section is amended to change, "in its discretion," to "in accordance with" the provisions in Sections 10170.1 et seq.," to grant or deny the subsequent request for an exemption.

Section 101170.1(q)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Section 101170.1(r) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications for clarity, were previously at Section 101170.1(f) et seq., with the exception of new Section 101170.1(r)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found transfer requests not on the LIC 9188 are incomplete and require the Department to make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

Section 101170.1(r)(1) is amended to reflect the current form revision date (9/03) for the LIC 9188.

Section 101170.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example if the individual was convicted of a DUI violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current law and regulation before a transfer is considered.

Section 101170.1(t)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the licensee and the individual, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 101170.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Sections 101170.1(u) et seq.

Specific Purpose:

The specific purpose of these sections is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Sections 101170.1(v) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on the assumption that the individual is rehabilitated and of good character not only for the instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Section 101170.1(w) et seq.

Specific Purpose:

The specific purpose of these sections is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Final Modification:

In response to public testimony, this section is amended for clarity by indicating the type of “administrative action” taken would depend on whether the individual were a applicant, licensee, spouse or dependant family member who resides in the facility, or an employee. If the Department rescinds a license applicant’s exemption, the administrative action would be an license denial. If the Department rescinds a licensee’s exemption, or the emption of a spouse or dependant family member who resides in the facility, the administrative action would be a license revocation. If the Department rescinds an employee’s exemption, the administrative action would be an employee exclusion.

Section 101170.1(x)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients.

The administrative action process such as revocation of the license (Health and Safety Code Section 1596.885) or exclusion action process (Health and Safety Code Section 1596.8897) will provide the individual with a hearing to contest the Department’s action.

Final Modification:

In response to public testimony, this section is amended for clarity. [Please see Final Modification for Section 101170(w) et seq.]

Section 101170.2(b)(1)

Specific Purpose:

The purpose of this amendment is to add clarifying language and to delete the phrase “prior to the individual’s employment, residence or initial presence in the facility”.

Factual Basis:

The clarifying language is necessary so it cannot be assumed that the CACI check is a fingerprint based check. With the requirement at Section 101170.2(c) that individuals must have a CACI clearance prior to employment, residence or presence, the language that states when the CACI check must be submitted is unnecessary.

Sections 101195(b), (b)(1) and (b)(1)(A)

Specific Purpose:

The specific purpose of this amendment is to convert these sections from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not obtained a criminal record clearance or exemption prior to their employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or criminal record exemption prior to an individual’s employment, residence or initial presence in the facility [Section 101170(e)], these sections must be amended to coincide with that requirement.

Final Modification:

This section is amended to coincide with definition name change from “Department of Justice Clearance” to “California Clearance.” Section 101195(b)(1) is deleted in response to public testimony and Section 101195(b)(1)(A) is renumbered to Section 101195(b)(1) for consistency in numbering.

Section 101195(b)(2) [Renumbered from Section 101195(b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101195(b)(1) to Section 101195(b)(2).

Factual Basis:

This amendment is necessary for consistency of format.

Section 101212(e)(3)(B)

Specific Purpose:

The specific purpose of this amendment is to delete the word “cards” and to correct a cross-reference.

Factual Basis:

This amendment is necessary because fingerprint cards are not the only method used to submit fingerprints. The Department recommends an electronic method of submitting fingerprint images.

Sections 101216(i) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert these sections from a requirement that an individual sign a criminal record statement pending receipt of a criminal record transcript to a requirement that an individual obtain a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or criminal record exemption prior to an individual’s employment [Section 101170(e)], these sections must be amended to coincide with that requirement.

The requirement that an individual sign a Criminal Record Statement and the subsections [Sections 101216(i)(1) and (2)] that state what an individual must declare on the Criminal Record Statement, have been deleted from this location but are added to Section 101170(d)(1).

Final Modification:

This section is amended to coincide with definition name change from “Department of Justice Clearance” to “California Clearance.”

Section 101217(a)

Specific Purpose:

The specific purpose of this amendment is to replace the term “employment application forms” with the term “personnel records,” add licensee and administrator to those whose records must be maintained on and delete “available to the Department for review” from this location.

Factual Basis:

This amendment is necessary for clarity. Personnel records is a more appropriate term as items in Sections 101217(a)(1) through (14) are not all employment application forms. The requirement that all personnel forms be available to the licensing agency for review can now be found in Section 101217(d).

Section 101217(a)(11) [Renumbered from Section 101217(b)]

Specific Purpose:

The specific purpose of this amendment is to delete qualifying information as to who must submit a health screening, delete the requirement of a health statement for volunteers from this location and to renumber Section 101217(b).

Factual Basis:

With the proposed amendments in Section 101217(a), a health screening can now be a subsection of Section 101217(a) and specifying licensee, employees and administrator is unnecessary. Volunteer requirements have been moved to the new proposed Section 101217(b). Existing Section 101217(b) is renumbered to 101217(a)(11) to make the health screening a subsection of Section 101217(a).

Section 101217(a)(12)

Specific Purpose:

The specific purpose of this section is to add tuberculosis test documents to the list of records that must be maintained on all employees.

Factual Basis:

Tuberculosis test documents must be listed separately for clarity and emphasis. Tuberculosis tests are usually performed separate from a health screening. The health screening form provided by the Department includes limited space for a positive or negative tine test. Complete tuberculosis test documents could include results of a chest x-ray and/or other follow-up reports.

Section 101217(a)(13)

Specific Purpose:

The specific purpose of this section is to add a signed criminal record statement to the list of records that must be maintained in the employee's personnel record.

Factual Basis:

This section is necessary for clarity. Section 101170(d) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. This section only clarifies where that statement must be maintained.

Final Modification:

In response to public testimony, this section is amended by including the phrase "as required by Section 101170(d)" for clarity.

Section 101217(a)(14)

Specific Purpose:

The specific purpose of this section is to add documentation of a criminal record clearance or exemption to the list of records that must be maintained in the employee's personnel record.

Factual Basis:

This section is necessary for clarity. Section 101170(k) requires that this documentation be kept in the individual's personnel file. This section repeats that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee's personnel file.

Final Modification:

In response to public testimony, this section is amended by including the phrase "as required by Section 101170(e)" for clarity.

Section 101217(b) et seq.

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All documents listed are required by other sections. These sections repeat those requirements so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Final Modification:

In response to public testimony, Sections 101127(b)(3)(A) and (B) are amended by including the phrase "as required by Section 101170(d)" and "as required by Section 101170(e)," respectively, for clarity.

Section 101217(d)

Specific Purpose:

The specific purpose of this section is to add the word "personnel" and to include the phrase "shall be available to the licensing agency for review" that was repealed in Section 101217(a) above.

Factual Basis:

This section is necessary for clarity and consistency. "Personnel records" is a more descriptive term that is used throughout this section. The phrase "shall be available to the Department (licensing agency) for review" that is proposed for repeal in Section 101217(a) above, is added to the existing language here as it logically follows that personnel records at the facility should be available to the licensing agency.

Section 102352(c)(3)

Specific Purpose:

The specific purpose of this section is to define the term "Child Abuse Central Index."

Factual Basis:

This section is necessary to place this definition into regulation because existing regulations state that all license applicants, employees and adults associated with a licensed facility must

submit a Child Abuse Central Index form so that the Department may conduct a search of the Child Abuse Central Index. This definition is taken from the definition of the Child Abuse Central Index within the California Department of Justice produced brochure, dated 2000, about the Child Protection Program.

Final Modification:

This section is renumbered to Section 102352(c)(4) for consistency of format.

Section 102352(c)(4)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility that cares for children depends upon whether the individual has a “Child Abuse Central Index clearance.” In addition, clients or persons who are placing clients in facilities that care for children and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand what a clearance means when a “Child Abuse Central Index clearance” is issued.

Final Modification:

This section is renumbered to Section 102352(c)(5) for consistency of format.

Section 102352(c)(5) [Renumbered from Section 102352(c)(3)]

Specific Purpose:

The specific purpose of this regulation is to renumber Section 102352(c)(3).

Factual Basis:

Section 102352(c)(3) is renumbered to Section 102352(c)(5) for consistency of format with the adoption of new Sections 102352(c)(3) and (4).

Final Modification:

This section is renumbered to Section 102352(c)(6) for consistency of format.

Section 102352(c)(6) et seq.

Specific Purpose:

The specific purpose of these sections is to define the term “conviction.”

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations state the actions that the Department is required to take if the Department learns that an individual has been “convicted” of a crime.

Final Modification:

This section is renumbered to Section 102352(c)(7) for consistency of format.

Section 102352(c)(7)

Specific Purpose:

The specific purpose of this section is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a “criminal record clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a DOJ and an FBI clearance.

Final Modification:

This section is renumbered to Section 102352(c)(8) for consistency of format.

Section 102352(d)(3)

Specific Purpose:

The specific purpose of this section is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in proposed Section

102352(c)(7) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Final Modification:

This section is renumbered to Section 102352(c)(1) because throughout the entire regulations all references to “Department of Justice Clearance” are amended to “California Clearance.” The definition was renamed “California Clearance” at the request of the Department of Justice.

Section 102352(d)(4) [Renumbered from Section 102352(d)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102352(d)(3).

Factual Basis:

Section 102352(d)(3) is renumbered to Section 102352(d)(4) for consistency of format with the adoption of new Section 102352(d)(3).

Final Modification:

This section is renumbered to Section 102352(d)(3) for consistency of format due to the removal of the Department of Justice Clearance from this subsection.

Section 102352(f)(2)

Specific Purpose:

The specific purpose of this section is to define the term “Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in proposed Section 102352(c)(7) includes a “Federal Bureau of Investigation (FBI) clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Federal Bureau of Investigation

(FBI) clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Federal Bureau of Investigation (FBI) clearance” is issued.

Section 102352(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because Section 102370(b) states that a medical professional, under certain conditions is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 102352(r)(1)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. It is important to provide a definition for those who may be affected.

Final Modification:

This definition is amended in response to public testimony to include efforts to reestablish good character since the date of the last conviction, including but not limited to education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service.

Section 102352(r)(2) [Renumbered from Section 102352(r)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102352(r)(1).

Factual Basis:

Section 102352(r)(1) is renumbered to Section 102352(r)(2) for consistency of format with the adoption of new Section 102352(r)(1).

Section 102352(s)(1)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to define this term to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual’s rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Section 102370(b) et seq.

Specific Purpose:

The purpose of these sections is to list individuals who are exempt from the fingerprint requirement.

Factual Basis:

Senate Bill (SB) 1992, Chapter 819, Statutes of 2000, added a provision that allows the Department to define additional fingerprint exempt individuals similar to those defined in Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv). The additional exempt individuals and situations are not only similar to Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv), but are virtually identical to other like Health and Safety Code Sections and regulation sections for other community care facility types. For easy reference the individuals and situations specified in Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv) are included in these proposed subsections making this an inclusive list off all exempt individuals and situations.

Section 102370(c) [Renumbered from Section 102370(b)]

Specific Purpose:

The specific purpose of this section is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual’s statement regarding his/her criminal history be on the LIC 508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement, LIC 508. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 102370(d) is amended to require that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102370(c)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

These sections are necessary so individuals are aware what information must be declared. This section is necessary for consistency with other like regulation sections.

Final Modification:

In response to public testimony, Section 102370(c)(1)(A) is amended to clarify that a person signing a LIC 508 must declare whether they were ever convicted of a crime other than a minor traffic violation regardless if a pardon was granted for the conviction, receipt of an expungement pursuant to Penal Code Section 1203.4 or the conviction sealed as the result of a court order.

Section 102370(c)(2) [Renumbered from Section 102370(c)(1)]

Specific Purpose:

This specific purpose of this amendment is to renumber Section 102370(c)(1) and to correct a cross-reference from Section 102369(b)(8) to Section 102370(j).

Factual Basis:

This amendment is necessary to correct a cross-reference error and to renumber Section 102370(c)(1) to Section 102370(c)(2) for consistency and clarity.

Section 102370(c)(2)(B) et seq. [Renumbered from Section 102370(b)(1) et seq.]  
(Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that allows for citation for failure to submit fingerprints.

Factual Basis:

These sections are no longer necessary in light of the new requirement [Section 102370(d)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Sections 102370(c)(2)(B) and (c)(2)(B)1. (New)

Specific Purpose:

The purpose of these sections is to clarify that a licensee or license applicant may not submit fingerprints for individuals who are not or will not be associated with his or her facility and thus are not within the Department's authority for receiving criminal record information.

Factual Basis

These sections are necessary to prevent non-licensed entities from using a license number to process fingerprints and obtain criminal record information for individuals who are not within the Department's authority for receiving criminal record information.

Section 102370(c)(2) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for continued employment.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 102370(d)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Section 102370(d) et seq.

Specific Purpose:

The specific purpose of this adoption is to add the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

Factual Basis:

This adoption is necessary to implement the requirements of Health and Safety Code Section 1522.04(a) which requires that individuals obtain either a criminal record clearance or exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being

transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

Final Modification:

In response to public testimony, this section is amended to clarify all individuals subject to criminal record review pursuant to Health and Safety Code Section 1596.871 shall prior to working, residing, or volunteering in a licensed facility, receive a California clearance or a criminal record exemption as required by the Department.

Sections 102370(e) and (e)(1)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 102370(d) will result in an immediate and continued civil penalty.

Factual Basis:

Civil penalties are not assessed against Family Child Care Homes for other regulations violations. Statute allows the Department to assess immediate civil penalties for fingerprint violations. This amendment is necessary to inform licensees that a violation of this regulation may result in a civil penalty assessment.

Section 102370(f)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 102370(d) may result in the denial of a license application or a suspension/revocation of a license.

Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Sections 102370(g) and (g)(3)

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102370(c) to Section 102370(g), to delete the word prospective and to make grammatical changes.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or criminal record exemption prior to an individual's employment [Section 102370(d)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 102370(c) is renumbered to 102370(g) for consistency of format.

Sections 102370(h) and (i) [Renumbered from Sections 102370(d) and (e)]

Specific Purpose:

The purpose of this amendment is to renumber Sections 102370(d) and (e).

Factual Basis:

Sections 102370(d) and (e) are renumbered to Sections 102370(h) and (i) for consistency of format with the restructuring of Section 102370.

Section 102370(j) et seq. [Renumbered from Section 102370(f) et seq.]

Specific Purpose/Factual Basis:

These sections are amended to clarify that a transfer may be requested by an applicant or a licensee; to correct the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add the phrase "to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 102370(k) [Renumbered from Section 102370(g)]

Specific Purpose:

The purpose of this amendment is to renumber Section 102370(g).

Factual Basis:

Section 102370(g) is renumbered to Section 102370(k) for consistency of format with the restructuring of Section 102370.

Section 102370(l)

Specific Purpose:

The specific purpose of this section is to place into regulation the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department, by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1596.871(e). At the conclusion of the investigation, the Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a TSO or immediate exclusion action.

Final Modification:

At the Department's discretion, Section 102370(l) is deleted because it has proven to be problematic and difficult, if not impossible, to enforce. The regulation places the responsibility to report subsequent arrests and convictions on the person with an exemption who may or may not be a licensee. If an individual who is not a licensee violates the regulation, the Department

could not cite the individual nor take action against the licensee for the individual's non-compliance. Additionally, Department of Justice reporting time has increased dramatically making the need for the individual to self report unnecessary.

Section 102370(l)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e. facility removal and/or exemption application or administrative action).

Final Modification:

At the Department's discretion, Section 102370(l)(1) is deleted. [See Final Modification to Section 102370(l) above.]

Section 102370(m)

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement at proposed Section 102370(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information. Without the authority to verify the information about the event, obtaining the information from the individual would be useless.

Final Modification:

In response to public testimony, this section is amended to add the phrase “from a law enforcement agency or court” for clarity. Section 102370(m) is relettered to Section 102370(l) for consistency of format.

Section 102370(m)(1)

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual’s criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the DOJ. With the new requirement at proposed Section 102370(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then to supply the Department additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the event, obtaining the information would be useless.

Final Modification:

In response to public testimony, this section is amended to add the phrase “from a law enforcement agency or court” for clarity. Section 80019(m)(1) is renumbered to Section 80019(l)(1) for consistency of format.

Sections 102370.1(a) and (a) (1) through (5)

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in this subsection. The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care. These sections are necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 102370.1(a)(6)

Specific Purpose:

The specific purpose of this section is to clarify that failure to comply with Section 102370.1(a) may result in a civil penalty of \$50 per day.

Factual Basis:

It is necessary to specify that civil penalties may be assessed for non-compliance with this section because, in general, civil penalties are not assessed for this license category. Currently non-compliance of only two other subsections may result in a civil penalty.

Sections 102370.1(b) and (b)(1)

Specific Purpose:

The specific purpose of these sections is to require that the licensee confirm within five days, that the individual has been removed.

Factual Basis:

These sections are necessary so that the Department will have positive and immediate confirmation that the individual has been removed. Individuals who are ordered removed are individuals who have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 102370.1(b)(1)(A)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual’s removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual's name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, Rev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

This section is amended to reflect the current form revision date (9/03) for the LIC 300A, LIC 300B, LIC 300C, and LIC 300D.

Section 102370.1(b)(1)(B)

Specific Purpose:

The specific purpose of this section is to clarify that failure to comply with Section 102370.1(b) may result in a civil penalty of \$50 per day.

Factual Basis:

It is necessary to specify that civil penalties may be assessed for non-compliance with this particular section because, in general, civil penalties are not assessed for Family Child Care Homes. Currently non-compliance of only two other subsections may result in a civil penalty.

Section 102370.1(b)(2)

Specific Purpose:

The specific purpose of this regulation is to require that licensees notify parents or authorized representatives that an individual has been removed or excluded from the family child care home by providing copies of the LIC 995B.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995B, Addendum to Notification of Parents Rights (Regarding Removal/Exclusion), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102370.1(b)(2)(A)

Specific Purpose:

The specific purpose of this regulation is to require that licensees notify parents or authorized representatives that an individual, who has been excluded or removed, may return to the family child care home by providing copies of the LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995C, Addendum to Notification of Parents Rights (Regarding Reinstatement), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102370.1(b)(3)

Specific Purpose:

The specific purpose of this regulation is to require that licensees obtain a signed and dated receipt from parents or authorized representatives that acknowledges that they received a copy of the LIC 995B or LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

Section 102370.1(b)(4)

Specific Purpose:

The specific purpose of this regulation is to require that licensees maintain copies of signed and

dated LIC 995B or LIC 995C and that these copies be made available to the Department upon request.

Factual Basis:

This section is necessary to enable the Department to fulfill its statutory mandate to monitor facilities and ensure that the licensee is complying with the requirement that parents/guardians receive copies of the LIC 995B or LIC 995C.

Section 102370.1(c) [Renumbered from Section 102370.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102370.1(a) to Section 102370.1(c).

Factual Basis:

This amendment to renumber is necessary for consistency of format with the addition of new Sections 102370.1(a) and (b).

Section 102370.1(c)(3)(A)

Specific Purpose:

The specific purpose of this amendment is to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

This section is necessary for clarity. The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 102370.1(c)(3)(E)1.

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E.

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Final Modification:

This section is amended to reflect the current form revision date (7/03).

Section 102370.1(c)(3)(G)1.a.

Specific Purpose:

The specific purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03.

Factual Basis:

The LIC 508 was revised in January 2003 to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102370.1(c)(4) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

### Factual Basis

These sections are necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding these sections makes it clear to the affected individual that this is considered.

### Section 102370.1(b) et seq. (Repealed)

#### Specific Purpose:

The purpose of this amendment is to repeal the sections that reference the non-exemptible crimes in Health and Safety Code Section 1596.871(f) and Penal Code Section 667.5(c).

#### Factual Basis:

This amendment is necessary because these sections are outdated, incomplete and difficult to decipher which specific crimes are non-exemptible. A comprehensive list with specific crime names is included in the new proposed Handbook Sections 102370.1(k)(1) through (52).

### Sections 102370.1(d) and (d)(1)

#### Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption.

#### Factual Basis:

These sections are necessary as a precursor to existing Section 102370.1(c), now renumbered to Section 102370.1(e), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written request for the exemption, the individual's personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual's rehabilitation.

#### Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Also, since adoption of these regulations, the Department has extended the time allowed to submit an exemption request and required documents from 30 days to 45 days to allow individuals additional time to obtain court documents verifying that their probation was informal. Finally, Section 102370(d)(1) is

amended, at the Department's discretion, to specifically note that the documents the Department will request include police reports and certified court documents.

Sections 102370.1(d)(2) and (d)(3)

Specific Purpose:

The purpose of these sections is to state what action the Department will take if the documents, requested by the Department in the written notice, are not submitted within 30 days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Final Modification:

This section is amended, at the Department's discretion, to clarify that an exemption can only be requested by a licensee or a license applicant. Additionally, since adoption of these regulations, the Department had extended the time allowed to submit an exemption request and required documents from 30 days to 45 days.

Section 102370.1(d)(4)

Specific Purpose:

The specific purpose of this amendment is to add individual exemption criteria.

Factual Basis:

This section is added at the Department's discretion. This section was not included originally because the Department proposed, through AB 1240, to delete individual exemptions. The provision to repeal individual exemptions was amended out of the language of AB1240 on January 22, 2004.

Sections 102370.1(e) through (g) [Renumbered from Sections 102370.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 102370.1(c) through (e).

Factual Basis:

Sections 102370.1(c) through (e) are renumbered to Sections 102370.1(e) through (g) for consistency of format with the restructuring of Section 102370.1.

Existing Section 102370.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 102370.1(f) et seq. from this location.

Factual Basis:

The language in these sections, with slight modifications, can be found in the new Section 102370.1(p).

Existing Section 102370.1(g) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 102370.1(g) from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 102370.1(r).

Section 102370.1(h) and (h)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because Section 102370.1(c)(3)(G) includes “evidence of honesty and truthfulness” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor, that is truthful and consistent with their criminal history. Additionally, the Department has encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. This section will allow the Department to deny or rescind an exemption if it cannot obtain honest statements supported by the individual’s criminal history or if it becomes aware that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

Sections 102370.1(h)(2) and (h)(2)(A)

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

Factual Basis:

Probation and parole are terms of a criminal sentence. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed their criminal sentence. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation) are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

## Section 102370.1(i)

### Specific Purpose:

The specific purpose of this section is to introduce the following seven subsections that list specific criteria that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

### Factual Basis:

This section is necessary to protect the health and safety of clients in care and to provide for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1596.871(f) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 102370.1(c)(3) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions, the more years are required since the last period of probation or parole before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

## Section 102370.1(i)(1)

### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or probation before the Department will consider granting a criminal record exemption.

### Factual Basis:

Probation is a part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all

terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and noncriminal activity on their own for at least one year since incarceration or completing probation without it being required for compliance with their probation term and without the supervision of a probation officer.

Requiring one year beyond incarceration or probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year since completing probation is minimal and vital. If an individual can demonstrate one year since incarceration or probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

#### Section 102370.1(i)(2)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

##### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without

subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

### Section 102370.1(i)(3)

#### Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

#### Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 102370.1(i)(4)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

Section 102370.1(i)(5)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 102370.1(i)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person.

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

#### Section 102370.1(i)(7)

##### Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in Sections 102370.1(i)(1) through (5) will begin from the last date of conviction.

##### Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

#### Section 102370.1(j)

##### Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the criteria specified in Section 102370.1(i)(1) through (6) is a rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

##### Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without a subsequent conviction, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

Section 102370.1(k) and Handbook Sections 102370.1(k)(1) through (52)

Specific Purpose:

The specific purpose of Section 102370.1(k) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1596.871(f) will not be granted a criminal record exemption. Also, a handbook is added.

Factual Basis:

Section 102370.1(k) is necessary to implement and clarify the provisions of Health and Safety Code Section 1596.871(f)(1) which prohibits the Department from granting exemptions to individuals who have been convicted of specific crimes. This non-exemptible crimes list, previously located in Section 102370.1(b) has been updated to reflect current statute. Handbook Sections 102370.1(k)(1) through (52) are added to provide the Health and Safety Code referenced in Section 102370.1(k) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections 102370.1(k)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

Section 102370.1(l)

Specific Purpose:

The specific purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a “simplified exemption.”

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1596.871(c)(3) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual’s history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 102370.1(c) through (k).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

#### Section 102370.1(l)(1)

##### Specific Purpose:

The purpose of this section is to state that if the individual's criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 102370.1(m) of these proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

##### Factual Basis:

This section is necessary because if the individual's criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not include this type of evaluation, therefore the standard exemption process would be more appropriate.

#### Sections 102370.1(l)(2) through (4)

##### Specific Purpose:

The purpose of these sections is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

##### Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 102370.1(m)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Section 102370.1(n) et seq. [Renumbered from Section 102370.1(h) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102370.1(h) and to make grammatical changes.

Factual Basis:

Section 102370.1(h) is renumbered to Section 102370.1(n) for consistency of format with the restructuring of Section 102370.1. Grammatical changes are made for clarity.

Section 102370.1(o)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1596.8897 and the procedure to follow when that time limit expires. This section establishes the limits for an individual who was excluded due to a denied exemption and for an individual who was excluded because he/she was convicted of a non-exemptible crime.

Section 102370.1(o)(1)

Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual's subsequent exemption request coincides with the exclusion limit set forth in Section 102370.1(o). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and provide an incentive to do so.

Section 102370.1(o)(2)

Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

Section 102370.1(o)(3)

Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section

clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Final Modification:

In response to public testimony, this section is amended to change, "in its discretion," to "in accordance with" the provisions in Sections 102370.1 et seq.," to grant or deny the subsequent request for an exemption.

Section 102370.1(o)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Section 102370.1(p) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications for clarity, were previously at Section 102370.1(f) et seq., with the exception of new Section 102370.1(p)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9188 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Final Modification:

Section 102370.1(p)(1) is amended to reflect the current form revision date (9/03) for the LIC 9188.

Section 102370.1(q) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example if the individual was convicted of a DUI violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current law and regulation before a transfer is considered.

Section 102370.1(r)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the licensee and the individual, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 102370.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Section 102370.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Section 102370.1(t) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on the assumption that the individual is rehabilitated and of good character not only for the instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Section 102370.1(u) et seq.

Specific Purpose:

The specific purpose of these sections is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Final Modification:

In response to public testimony, this section is amended for clarity by indicating the type of “administrative action” taken would depend on whether the individual were an applicant, licensee, spouse or dependant family member who resides in the facility, or an employee. If the Department rescinds a license applicant’s exemption, the administrative action would be a license denial. If the Department rescinds a licensee’s exemption, or the exemption of a spouse or dependant family member who resides in the facility, the administrative action would be a license revocation. If the Department rescinds an employee’s exemption, the administrative action would be an employee exclusion.

Section 102370.1(v)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients. The administrative action process such as revocation of the license (Health and Safety Code Section 1596.885) or exclusion action process (Health and Safety Code Section 1596.8897) will provide the individual with a hearing to contest the Department’s action.

Final Modification:

In response to public testimony, this section is amended for clarity. See Final Modification for Section 102370.1(u).

Section 102370.2(b)(1)

Specific Purpose:

The purpose of these amendments to add clarifying language and to delete the phrase “prior to the individual’s employment, residence or initial presence in the facility”.

Factual Basis:

The clarifying language is necessary so it cannot be assumed that the CACI check is a fingerprint based check. With the requirement at Section 102370.2(b) that individuals must have a CACI clearance prior to employment, residence or presence, the language that states when the CACI check must be submitted is unnecessary.

Section 102395(a)(1) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert this section from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not obtained a Department of Justice clearance or a criminal record exemption, requested a transfer of a clearance or request and be approved for an exemption prior to their employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or criminal record exemption prior to an individual’s employment, residence or initial presence in the facility [Section 102370(d)], this section must be amended to coincide with that requirement.

Final Modification:

This section is amended to coincide with definition name change from “Department of Justice Clearance” to “California Clearance.” Section 102395(a)(1) is deleted in response to public testimony and Section 102395(a)(1)(A) is renumbered to Section 102395(a)(1).

Section 102416(d) et seq.

Specific Purpose:

The purpose of these sections is to place the requirement that all individuals subject to a criminal record background check obtain a Department of Justice clearance or criminal record exemption, request a transfer of a clearance or request and be approved for transfer of a criminal record exemption prior to employment or initial presence in a child care facility in the Personnel Requirements section.

Factual Basis:

Section 102370(d) requires that individuals have a Department of Justice clearance or criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of a criminal record exemption prior to employment or initial presence in a child care facility. It is necessary to duplicate this requirement in the Personnel Requirements section for emphasis and consistency with other like regulation sections.

Final Modification:

This section is amended to coincide with definition name change from “Department of Justice Clearance” to “California Clearance.”

Sections 102416(e) and (f) [Renumbered from Sections 102416(d) and (e)]

Specific Purpose/Factual Basis:

Sections 102416(d) and (e) are being renumbered to Sections 102416(e) and (f) to allow for the adoption of new Section 102416(d).

Sections 102416.1 (Title) and 102416.1(a)

Specific Purpose:

These sections are being adopted to add a new section that would require that family child care providers maintain personnel records on all employees and volunteers.

Factual Basis:

Specific items listed [Sections 102416.1(a)(4), (6), (10), (12) and (b)(1)(A) and (B)] are required by other regulation sections. However, family child care regulations have never required that those items be located in a specific place or that other identifying information be maintained at all. When a Licensing Program Analyst conducts a triennial evaluation or a complaint investigation where staff coverage or culpability is an issue, the analyst must be able to quickly access all required information. Many complaint investigations have not been resolved because the Department could not determine who was on duty at the time of

an alleged violation or could not contact a former employee or volunteer as a witness to an alleged violation. Requiring family child care licensees to place this information in a personnel record is consistent with other regulation sections except small family homes. Small family homes is the only exception because this licensee category is less likely to hire staff.

The remaining items [Sections 102416.1(a)(1) through (3), (5), (7) through (9), and (11)] not required by other family child care regulation sections are identical to the requirements in other license category personnel regulation sections and are therefore necessary here.

#### Section 102416.1(a)(1)

##### Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's full name in the employee's personnel record.

##### Factual Basis:

This section is necessary for complete identification of the individual. Employment application forms for any type of job require an individual's complete name. In a child care industry where staff are commonly referred to with endearing nicknames, it is particularly necessary that the individual's complete name be on record.

This requirement is consistent with other license category personnel regulation sections.

#### Section 102416.1(a)(2)

##### Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's driver's license number, if they are to transport children, in the employee's personnel record.

##### Factual Basis:

This section is necessary to ensure that all drivers have a current driver's license. It is logical that if an individual's job duties require that they have a specific certification or license to perform their job, that the number, if not a copy, of the certification or license be noted in their personnel record. This is a standard element commonly found on employment application forms for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(3)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's date of employment in the employee's personnel record.

Factual Basis:

This section is necessary so that the Department can definitively determine when an individual began their employment at the facility. This information is particularly necessary for the Department to determine if a citation and civil penalty is warranted for failure to submit fingerprints prior to an individual's employment. Additionally this information may be needed to aid in a complaint investigation. A review of the personnel records with the date of employment of all staff will allow the investigator to narrow their interviews to individual's who were employed at the facility on the date of an alleged violation. This is a standard element commonly found on employment application forms for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(4)

Specific Purpose:

The specific purpose of this section is to require that the personnel record contain the employee's date of birth.

Factual Basis:

Section 102352 (Title 22, Division 12, Chapter 3) defines an assistant provider, in part, as a person at least 14 years of age. This section is necessary to ensure that all employees are at least 14.

Section 102416.1(a)(5)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's current home address and phone number in the employee's personnel record.

Factual Basis:

This section is necessary so the Department may contact the individual to aid in the evaluation or investigation of the child care home. This is a standard element commonly found on employment application forms for any type of job. This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(6)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain documentation that the employee has completed training on preventative health practices in the employee's personnel record.

Factual Basis:

Section 102416(c) requires that specified personnel complete training on preventative health practices as required by Health and Safety Code Section 1596.866. This section is necessary so that evidence of completion of that training can be easily obtained and reviewed.

Section 102416.1(a)(7)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain a record of the employee's past experience including types of employment and former employers in the employee's personnel record.

Factual Basis:

Though prior experience is not required to be an assistant provider, this information is necessary in the event the employee's experience is an issue. This is a standard element commonly found on employment application forms for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(8)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's duties in the employee's personnel record.

Factual Basis:

This section is necessary so that the individual and the Department can have a record of what the individual's job duties are. This is a standard element commonly found on employment application forms for any type of job. This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(9)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's termination date if no longer employed in the employee's personnel record.

Factual Basis:

This is a standard element commonly found in personnel records for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(10)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain a copy of the Notice of Employee Rights [LIC 9052 (Rev. 3/03)], signed and dated by the employee, in the employee's personnel record.

Factual Basis:

Section 102416(a)(2) requires that a copy of the signed Notice of Employee Rights [LIC 9052 (Rev. 3/03)] be retained in the employee's personnel record. Prior to this amendment licensees were not required to maintain personnel records.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9052, Notice of Employee Rights, Rev. 3/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102416.1(a)(11)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain a signed criminal record statement in the employee's personnel record.

Factual Basis:

Section 102370(d) (Title 22, Division 12, Chapter 3) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. This section clarifies where that statement must be maintained.

Section 102416.1(a)(12)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain documentation of a criminal record clearance or exemption in the employee's personnel record.

Factual Basis:

Section 102370(i) (Title 22, Division 12, Chapter 3) requires that this documentation be kept in the individual's personnel file. This section repeats that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee's personnel file.

Sections 102416.1(b) and (b)(1)

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All documents listed are required by other sections. These sections repeat those requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Section 102416.1(b)(1)(A)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain a signed criminal record statement in the volunteer's personnel record.

Factual Basis:

Section 102370(d) (Title 22, Division 12, Chapter 3) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. This section clarifies where that statement must be maintained.

Section 102416.1(b)(1)(B)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain documentation of a criminal record clearance or exemption in the volunteer's personnel record.

Factual Basis:

Section 102370(i) (Title 22, Division 12, Chapter 3) requires that this documentation be kept in the individual's personnel file. This section repeats that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Section 102416.1(c)

Specific Purpose:

The specific purpose of this section is to require that the licensee retain all personnel records for at least three years after the employee or volunteer is terminated or otherwise no longer associated with the facility.

Factual Basis:

This section is necessary so that the Department may review the records of former employees/volunteers in the event the records are needed to aid a complaint investigation. The three year record retention requirement is consistent with all other personnel record retention requirements in other license category regulations as well as the retention requirement for children's records.

Section 102416.1(d)

Specific Purpose:

The specific purpose of this section is to require that all personnel records be maintained at the child care home and that the records be available to the licensing agency for review

Factual Basis:

This section is necessary so that the Department may have immediate access to the records when unannounced evaluations or investigations are being conducted.

Sections 102417(r) and (r)(1)

Specific Purpose:

The specific purpose of these sections is to require that when a licensee receives a notice from the Department to remove an individual, the licensee does so immediately.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes. The crimes are listed in Section 102370.1(a). The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care.

Section 102417(r)(2)

Specific Purpose:

The specific purpose of this regulation is to require that licensees notify parents or authorized representatives that an individual has been removed or excluded from the family child care home by providing copies of the LIC 995B.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995B, Addendum to Notification of Parents Rights (Regarding Removal/Exclusion), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102417(r)(2)(A)

Specific Purpose:

The specific purpose of this regulation is to require that licensees notify parents or authorized representatives that an individual, who has been excluded or removed, may return to the family child care home by providing copies of the LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995C, Addendum to Notification of Parents Rights (Regarding Reinstatement), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102417(r)(3)

Specific Purpose:

The specific purpose of this regulation is to require that licensees obtain a signed and dated receipt from parents or authorized representatives that acknowledges that they received a copy of the LIC 995B or LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

Section 102417(r)(4)

Specific Purpose:

The specific purpose of this regulation is to require that licensees maintain copies of signed and dated LIC 995B or LIC 995C and that these copies be made available to the Department upon request.

Factual Basis:

This section is necessary to enable the Department to fulfill its statutory mandate to monitor facilities and ensure that the licensee is complying with the requirement that parents/guardians receive copies of the LIC 995B or LIC 995C.

Section 102419(h)

Specific Purpose:

The specific purpose of this section is to require that the licensee provide a copy of the LIC 995B, the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion), that is still in effect, to new parents/guardians.

Factual Basis:

This section is necessary so that parents/guardians new to the day care home are aware that someone has been excluded or removed from the home. Section 102370.1(b) requires that the licensee provide parents/guardians, of all children in care, a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion). If this requirement is not part of the admission procedures as well, it is conceivable that a licensee could begin providing care to all new clients and interpret Section 102370.1(b) as not being applicable to these new clients because they were not "in care" when the notice from the Department was received.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995B, Addendum to Notification of Parents Rights (Regarding Removal/Exclusion), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

#### Section 102419(h)(1)

##### Specific Purpose:

The specific purpose of this section is to require that upon notice from the Department that an excluded/removed individual may return to the facility, the licensee notify parents/ guardians using the LIC 995C.

##### Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995C, Addendum to Notification of Parents Rights (Regarding Reinstatement), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

#### Section 102419(i)

##### Specific Purpose:

The specific purpose of this regulation is to require that licensees obtain a signed and dated receipt from parents or authorized representatives that acknowledges that they received a copy of the LIC 995B or LIC 995C.

##### Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

#### Section 102419(j)

##### Specific Purpose:

The purpose of this regulation is to require that licensees maintain copies of a signed and dated LIC 995B or LIC 995C and that they be made available to the Department upon request.

Factual Basis:

This section is necessary to enable the Department to fulfill its statutory mandate to monitor facilities and ensure that the licensee is complying with the requirement that parents/guardians receive copies of the LIC 995B or LIC 995C.

b) Identification of Documents Upon Which Department Is Relying

- Senate Bill (SB) 1984, Chapter 1267, Statutes of 1994
- SB 1992, Chapter 819, Statutes of 2000
- U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1983 (referred to in these Statement of Reasons as the U.S. Department of Justice most recent report on prisoner recidivism)
- California Department of Justice, Child Protection Program Brochure, dated 2000

c) Testimony and Response

There were oral comments presented and written testimony received as a result of the October 15, 2003 public hearing. General comments will be presented followed by the specific comments in numerical order.

**Those testifiers submitting written comments (via mail, e-mail, hand-delivered or fax) are as follows:**

- #1 Jack E. Christy, Director of Public Policy for the California Association of Homes and Services or the Aging (CAHSA) in Sacramento
- #2 Kathy McGuinness, Executive Director and Amy Grosch, Assistant Director of the Northern California Child Development, Inc., Tehama County Head Start in Red Bluff
- #3 Perry Vermilyea, Associate Director, Opportunity for Independence [pvermilyea@ofiinc.org]
- #4 Jean M. Floyd, Human Resources Director, Westview Services, Inc. in Anaheim [jeanfloyd@juno.com]
- #5 Heather S. Harrison, Vice President of Public Policy for the California Assisted Living Association (CALA) in Sacramento
- #6 Tim Welch of Devereaux California [twelch@devereaux.org]
- #7 Catherine Wooliever, Human Resources Director for ARC in Fresno

- #8 Margaret J. Kane, Quality Assurance, Regional Center of the East Bay [mkane@receb.org]
- #9 Christine S. Nichols, Director of Education, for Creative Alternative for Learning and Living Inc. in Atascadero
- #10 Denise Paller [DP5397@aol.com]
- #11 Kristy Feck, Director of Community Services for Toolworks in San Francisco [KFeck@toolworks.org]
- #12 Donita Stromgren, Public Policy & Membership Services Manager for the California Child Care Resource & Referral Network in Davis
- #13 Joyce Fowler of Clausen House in Oakland [joyce@clausenhouse.org]
- #14 Douglas K. Johnson, Associate Executive Director, for the California Alliance of Child and Family Services (CACFS) in Sacramento [djohnson@cacfs.org]
- #15 Donna F. Brown, House Administrator for Creative Alternative for Learning and Living Inc. in Atascadero
- #16 Avi Leibovici, Executive Director of Specialized Health Services, Inc. in North Hollywood
- #17 Lydia Missaelides, MHA, Executive Director for the California Association for Adult Day Services (CAADS) in Sacramento [lydia@caads.org]
- #18 Ramon Lopez, Administrator/Licensee/QMRP for Vila de Martin Jude Homes, Inc. and Chateau St. Mark Homes, Inc. [RSPLOPEZ@aol.com]
- #19 Emmanuel Serrière, Executive Director, of Manteca Caps in Manteca [www.MantecaCAPS.org]
- #20 Jodie Berger, Regional Counsel, Legal Services of Northern California (LSNC) in Vallejo [jberger@lsnc.net]
- #21 Ronald P. Wolff, Executive Director of OPARC in Montclair [rwolff@oparc.org]
- #22 Diane Morrow, NHA, CEO, of the ProvidersWeb in Altaville [ProvidersWeb.com]
- #23 Erica Dubois, Program Coordinator for Creative Alternative for Learning and Living Inc. in Atascadero

- #24 Eve R. Hershcopf, Senior Staff Attorney, for the Child Care Law Center (CCLC) in San Francisco
- #25 Peter LeDoux, Executive Director, of the Sacramento Association for the Retarded in Sacramento
- #26 Karen Jones, Executive Director of the Pomona Valley Workshop in Montclair [karen@pvwonline.org]
- #27 Maureen Fitzgerald, Executive Director of the California Association for the Retarded (CAR) in Sacramento
- #28 Heidi L.Spencer, Accounting Manager & Human Resources for Creative Alternative for Learning and Living Inc. in Atascadero and
- #29 Ruth M. Howell, MSW, ACSW for Ruth M. Howell and Associates Consulting Services in Carlsbad
- #30 Lisa Chin, Government Relations Advocate for the California State Council’s Service Employees International Union in Sacramento
- #31 Boyd Bradshaw of the REScoalition in Orange
- #32 Eric Dowdy, Public Policy Analyst for Jack E. Christy, Director of Public Policy, California Association of Homes and Services for the Aging (CAHSA) in Sacramento
- #33 Charles W. Skoien of the Community Residential Care Association of California (CRCAC) in Sacramento also oral comments at the 10-15-03 public hearing

**Those testifiers presenting oral comments at the public hearing are as follows:**

- #34 Ronald Sullivan of the REScoalition in Southern California
- #35 Joan B. Lee of the Gray Panthers of California in Sacramento
- #36 Sister Marygrace Puchal of East Bay Services in Concord

The testifiers’ general and oral comments are addressed first and responded to by the Department; followed by the specific comments in numerical order and the Department’s responses.

**General Comments**

**General Comment:**

Several commenters (#’s 2, 3, 4, 6, 7, 9, 10, 11, 13, 15, 16, 18, 21, 23, 25, 26, 27, 28, 30, and 32) testified about: 1) the length of time that takes to receive a criminal background checks through LiveScan and from the Department of Justice and/or 2) about the inability to meet the required

staffing ratios with the current restrictions and/or 3) the extra financial burden and logistical problems and/or 4) the viability of using less restrictive alternatives for granting exceptions.

Response:

- 1) 95 per cent of all responses are received within three business days. To further speed the delivery of this information, the Department created an on-line clearance listing where the licensee can view clearances the instant they are received from the Department of Justice. When an individual's name appears on that clearance list, he/she can begin working. Individual's with criminal histories (10 per cent of all background checks conducted) will encounter increased delays or, if convicted of specified serious crimes, will not be able to work or reside in a facility at all.
- 2) All facilities are required to have qualified, background cleared substitutes in the event of an emergency such as staff illness or a staff person quitting without notice. Staffing ratios should not be compromised while a background check is conducted on a new hiree.
- 3) There would not be an extra financial burden since who must submit fingerprints for a background check and background check processing fees have not changed. Logistically, submitting fingerprints using Livescan should not be a problem. There are over 280 Livescan sites statewide with one in every licensing regional office.

General Comment:

Commenter #19 indicated that they are opposed to the regulations because they have lost applicants (clericals who have no contact with consumers in the first place) to other jobs because of the delay associated with the requirements.

Commenter #19 provided compromise language to the regulations to also apply to volunteers, as follows:

“Employees can be on the premises of a licensed facility pending results of the DOJ only if they are never left alone with the consumers.”

Response:

With the implementation of clearance or exemption prior to work, the Department no longer has to order the removal of individuals convicted of violent misdemeanors or felonies. If employees were allowed to “volunteer” until receipt of their clearance or exemption, the Department would have to reinstitute the removal and removal verification process. Additionally, the Department does not have the resources to monitor compliance with the requirement that the individual is never alone with clients.

General Comment:

Commenter #29 testified of having two concerns because the Department sets time limits and other restrictions upon the licensee or person seeking an exemption, yet there are no time limits or restrictions for the time when an administrative hearing will be held (i.e., number of days after an appeal of a denial shall be set). The commenter suggested that a hearing be held within 30 days after the appeal is received by the Department. Further, that all categories of licensing be entitled to know when an appeal or request for an administrative hearing will be held (either no more than 30 days from the receipt of the request by the Department or that it will be scheduled within 30 days and the licensee or person requesting the hearing, be notified of the actual date and place no later than 10 days in advance of the hearing.

Response:

The Department must follow the procedures found in the Health and Safety Code as well as the Administrative Procedures Act when an individual is entitled to receive an administrative hearing. The scheduling of administrative hearings is performed by the Office of Administrative Hearings (OAH) and is beyond the control of the Department. Unfortunately, there is insufficient staff at the Department and at the OAH to provide a hearing within thirty days.

General Comment:

Commenter #20, Jodie Berger of the Legal Services of Northern California (LSNC), testified that "...[W]e have encountered rehabilitated individuals with criminal records who are seeking a criminal exemption for childcare licensing.

"More than 10 million children in the United States have parents who were imprisoned at some point in their children's lives their children's lives. In addition, 22 percent of adults on probation and 12 percent of adults on parole are women. Most of these adults were convicted of non-violent offenses. Many of these women are attempting to move from welfare to work, but face severe barriers to employment because of their criminal background, and other factors, such as a low education and employment skills.

"Employment is key to rehabilitation. Jobs help ex-offenders turn away from a life of crime or underground employment. Improving the standards for the granting of criminal record exemptions to those who have successfully rehabilitated their lives is key to removing barriers to employment.

"LSNC supports many aspects of the regulations, as they clarify and standardize procedural requirements for the exemptions. The lack of clear standards and procedures has been a significant barrier to low-income applicants for the exemptions, often resulting in the denial or inconsistent application of the exemption to those who have rehabilitated themselves.

“Overall, however, LSNC recommends that CDSS consider less restrictive alternatives to establishing rehabilitation, and should clarify and emphasize that the time frames set forth in the regulations are rebuttable presumptions.

“Finally, Legal Services of Northern California supports the comments submitted by the Child Care Law Center, generally and in particular the comments regarding the privacy of personnel records, the need to shift the burden of parental notification from the provider to the state, and the need to differentiate between licensed providers and license-exempt providers, and the prioritization of the processing of criminal exemptions according to the different circumstances faced by these providers.”

Response:

Though the criterion appears to be restrictive, it is, in fact, flexible. The criteria that a person with convictions must meet before the Department will consider granting an exemption is modified on a case-by-case basis depending on the specifics of the case, the police and court documents, and the evidence of rehabilitation submitted. The Department feels it is clearly stated that the exemption criteria is rebuttable.

Regarding the privacy of personnel records in Family Child Care Homes, the Department does not regulate all aspects of a licensee’s employer-employee relationships. Licensees should seek legal counsel from an attorney competent in labor law to ascertain what laws apply to the confidentiality of personnel records. The Department’s concern as to personnel records is to ensure that licensee’s maintain and provide records to Departmental personnel upon request in order to determine if the licensee is in compliance with the laws and regulations governing the operation of a licensed facility.

Regarding parental notification of excluded removed individuals in Family Child Care Homes, statute (Health and Safety Code Section 1596.8712) states that the licensee must notify the parents. This requirement is in statute and cannot be altered without legislative action.

General Comment:

Commenter #22, Diane Morrow, of ProvidersWeb, testified that “In the section pertaining to the fingerprint clearance of new hires prior to employment, we believe making this regulation permanent will severely impact small businesses. We fully understand the need to protect residents and clients of community care facilities, however, there are some challenges, which need to be addressed.

“The problem as we see it is that there is a serious staff shortage. Residential care providers already have a difficult time finding and recruiting good staff. The average pay is just slightly over minimum wage, and most facilities do not offer medical benefits. Care homes are on the

bottom of the ladder when it comes to being able to entice new good employees. If we ask new potential employees to wait for their fingerprint clearance to come back in two to three weeks before they can start working, most will go looking for other jobs. Most people who work in this type of job cannot afford to be out of work for two to three weeks.

“Then there is the problem of what happens when you have to fire several staff members at once, or have several people quit on you at once. How do you provide good care? Are we to make staff work double shifts and triple shifts until the potential new hires are able to work? And how are we to afford the overtime? It has been suggested that a care home can use registry help; I assure you most care homes could not afford it by any means.

“Our solution: Care homes can closely supervise new hires and only assign them limited tasks. Access to being alone with residents, resident personal property, and resident personal identification information can be prohibited until the fingerprint clearance is received.

“I have attached our Supervision of Staff Outline to better clarify our recommendations. There is a lot of orientation and training that has to be done during the first couple of weeks, which doesn’t require contact with the residents, their belongings, or identification information.

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Prior to hiring a person, the following tasks must be completed:

- Employment Application Completed
- Criminal Record Statement Completed
- Personal Interview (and recorded notes of the interview)
- The Application must be reviewed and checked for honesty.
- References listed on the application need to be called, and documentation of what was said during the call needs to be done.
- Previous Employment references must be checked. (See Call Reference Check or Use Written Request for Reference Check (can be faxed))
- If everything looks good, conduct second interview and review. (Employer to clarify information received on reference and previous employment checks; employer should go over Employment Information and Facility Rules)
- If still approved, have the employee submit their fingerprints for clearance and get the Pre-Employment Physical and TB Test Done (Health Screening Report).

Once hired the employee would be placed in the “Close Supervision” category until criminal record clearance is received. During this two to three week period of time, the employer needs to complete the employee orientation process, which should include Universal Precautions, Residents Rights Culture and Beliefs, Emergency Training; and they can perform tasks such as laundry and doing dishes, while waiting for the clearance.

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Categories of staff supervision:

**“Close Supervision:** During this time the Employee Orientation and Training takes place. The new hire must receive training in Universal Precautions, Residents Rights Culture and

Beliefs, and Emergency Service Training. The employee will receive specific instructions, and will be watched closely for accuracy. Upon successful completion of the task, the designated trainer will document the verified training. New trainees in all departments, and *always* those who do not have their fingerprints criminal record clearance verification back from Department of Justice, are watched closely and do not have access to residents (alone), resident valuables, including resident personal identification information. These employees are never alone with a resident, resident valuables, and resident identification information.

**“General Supervision:** Employees who have successfully received their fingerprints criminal record clearance verification, and who have been designated in writing for their job, fall under the general supervision area. In this area employees are still receiving some instruction, and learning additional job tasks, however the basics of the job have been learned therefore they are able to complete assigned job tasks independently in accordance with established policies. Typically, these employees are trusted and do have access to residents alone, resident valuables, including resident personal identification information.

**The following jobs fall under General Supervision:**

- Designated Medication Aid
- Designated Personal Care Assistant
- Designated Dietary Staff

The appropriate supervisor will periodically check their work for quality assurance reasons.

**“Broad Supervision:** Employees who fall under this area are given the greatest amount of trust, and are the most independent. Management jobs are designated in writing. They are considered management, and have the responsibility to make sure all staff they supervise adhered to facility established policies and procedures. These employees typically have the most access to residents, resident valuables, including resident personal identification information.

- Facility Manager
- Medication Manager
- Activity Director
- Maintenance Supervisor
- Dietary Supervisor

“The facility Administrator is responsible for periodically checking up on employees who fall under Broad Supervision for Quality Assurance purposes.”

Response:

95 per cent of all responses from the Department of Justice are received within 3 business days. To further speed the delivery of this information, the Department created an on-line clearance listing where the licensee can view clearances the instant they are received from the Department of Justice. When an individual's name appears on that clearance list, he/she can begin working. Individual's

with criminal histories (10 per cent of all background checks conducted) will encounter increased delays or, if convicted of specified serious crimes, will not be able to work or reside in a facility at all.

All facilities are required to have qualified, background cleared substitutes in the event of an emergency such as staff illness or a staff person quitting without notice. Staffing ratios should not be compromised while a background check is conducted on a new hiree.

#### General Comment

Commenter #8 indicated that the State of California owes individuals with developmental disabilities protection from harm and that it would be criminal to withdraw the regulations. The commenter felt that all complaints of delay should be verified and that it is believed the delays are minor.

#### Response:

The Department thanks the commenter for their support.

#### General Comment:

Commenter #17 testified that “In December 2002 and June 2003, the California Association for Adult Day Services (CAADS) conducted a statewide membership survey of adult day programs to determine the impact of these emergency regulations on providers. As a result of the survey, CAADS concluded that the passage and implementation of this emergency regulations package will have a direct impact on Adult Day Programs to employ qualified staff.

Our first question is does the statement of reasons meet the criteria for a finding of emergency, particularly as it applies to Adult Day Programs? Does having a “substantially automated system” using Live Scan Technology constitute an emergency? It is our understanding that the enabling legislation did not authorize emergency regulations.

**Secondly, there is significant concern about the new requirement that individuals must be background cleared prior to being present in the facility. The phrase “prior to initial presence in a licensed facility” is used throughout the regulations. It creates a problem because it the phrase “presence in the facility” is imprecise, subject to interpretation, and creates a conundrum for providers who will have to choose between being in compliance with staffing regulations or with this new background clearance requirement.**

Adult day programs are in publicly accessible buildings, not private homes. Many Adult Day Programs are small, located in stand-alone buildings, and conduct the majority of its activities within the facility, such as interviews and orientation of potential employees. Does this language mean that interviews for new hires cannot take place within the premises of the facility? Does this mean that orientation *that does not include any direct care contact* cannot be conducted in

the facility? Some Adult Day Programs are based within a multi-purpose building such as a senior center, where other programs are conducted and where members of the public are present and interacting with the day center participants. While clear for a residential facility, the definition of a “facility” is not clear in the context of day programs.

Response:

The Department’s Finding of Emergency has been reviewed and the Department’s rationale not questioned.

The term “initial presence” is taken directly from statute. These regulations do not make any changes to who has to be fingerprinted. The intent of the statute and the regulation is not to prevent an uncleared person from walking in the door of a facility to fill out personnel documents, attend an orientation or other situations addressed in the comments. The intent of the statute and the regulation is to address volunteers subject to a background check as “...employment, residence ...” would not apply to volunteers.

For Adult Day Programs, facility means all buildings and portions of buildings licensed by this Department to provide adult day services.

General Comment:

Commenter #17 indicated that, “On average, providers receive fingerprint clearances within 1 to 2 weeks. If fingerprint clearances are mandated prior to employment, there will be a minimum of a one-week delay in hiring critically needed employees. 27% of the providers who responded to the survey receive fingerprint clearances in 1-2 weeks on average, and 35% receive clearances in 3 weeks or more on average.

“Although the statewide Criminal Record Clearance process has improved, it still has systematic and operational flaws that delay the ability for a provider to obtain fingerprint clearances in a timely manner. Some providers have reported delays of several months to receive a clearance from their licensing agency. There are some situations where fingerprint submissions are “lost” in the system, or fingerprint submissions are delayed for inexplicable reasons (clearances are returned with no criminal history).

Because there is competition among employers to acquire the most qualified employee, there is a high probability of losing a qualified employee if delays cause the candidate to seek other employment. In adult day programs, many of these employees are low-wage earners. Providers are competing with other industries that do not require background clearances. If employees are in desperate need of a job, they will choose to work at a fast food restaurant immediately for the same wage than to wait 1-3 weeks for a background clearance prior to employment.

“The trickle down effect of background clearance delays will be a delay in providing critical services to those in need. There will be a disruption of program operations and direct services to participants. Participants on a waiting list will have to wait longer to receive services due to the regulatory requirements to maintain staff to participant ratios.

“Because there is no alternative for immediate hiring during unexpected events, such as a sudden staff turnover, providers will be at risk for non-compliance with regulatory requirements mandating specific staff-to-participant ratios.”

Response:

95 per cent of all responses from the Department of Justice are received within 3 business days. To further speed the delivery of this information, the Department created an on-line clearance listing where the licensee can view clearances the instant they are received from the Department of Justice. When an individual’s name appears on that clearance list, he/she can begin working. Individual’s with criminal histories (10 per cent of all background checks conducted) will encounter increased delays or, if convicted of specified serious crimes, will not be able to work or reside in a facility at all.

All facilities are required to have qualified, background cleared substitutes in the event of an emergency such as staff illness or a staff person quitting without notice. Staffing ratios should not be compromised while a background check is conducted on a new hiree.

General Comment:

Comentor #14 CACFS testified that “In order to require community care facilities to obtain a criminal records clearance or exemption prior to employment, residence or initial presence in a licensed facility, the Health and Safety Code Section 1522.04 mandates that the California Department of Social Services (CDSS) must demonstrate that it “... is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information from the Department of Justice within three business days.”

The member agencies of the California Alliance have reported to us that a large majority of clearances for fingerprints submitted using the Live Scan process are being issued within three business days. However, many of our member agencies question whether 95% of the clearances issued for fingerprints submitted using Live Scan are being issued within three business days on a consistent basis.

In order to demonstrate that CDSS is meeting the statutory mandate, and has the authority to issue these regulations, CDSS should provide, as part of its formal response to comments received through this Public Hearing process, data for the period since the implementation of the emergency regulations on July 16, 2003, which shows the percentage of clearances issued within three business days. In enacting Health and Safety Code Section 1522.04, it was the intent of the Legislature that CDSS and the Department of Justice (DOJ) should meet the “95% within three business days” standard on an ongoing and consistent basis. Therefore, these regulations should be amended to include two additional provisions:

- The first provision should require CDSS to issue a report on a periodic basis (e.g. quarterly, biannually, annually) to CCL-licensed facilities affected by these regulations showing the

percentage of clearances issued within three business days and demonstrating that it remains in compliance with the mandate of Section 1522.04.

- The second new provision which should be added to these regulations is one that suspends their enforcement on CCL-licensed facilities for any period of time when CDSS and DOJ fail to meet the “95% within three business days” standard.

These two provisions are necessary to ensure that the regulations are being implemented in accordance with their underlying statutory authority.

Response:

Health and Safety Code Section 1522.04 does not mandate that CDSS demonstrate that it is receiving 95 percent of its responses from the Department of Justice within three business days. For quick reference, the entire section is printed below;

1522.04 Criminal Record Background Check, Live-Scan

(a) The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, or a residential care facility, child day care facility, or foster family agency, licensed by the department pursuant to this chapter, Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30), or certified family home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice, for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII) to be used for applicant fingerprints. Therefore, when live-scan technology is operational, individuals shall be required to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services, before their initial presence in a community care facility. The regulations shall also cover the submission of fingerprint information to the Federal Bureau of Investigation.

(b) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the criminal history information required pursuant to subdivision (a) of Section 1522.04. If the Department of Justice cannot ascertain the information required pursuant to that subdivision within three working days, the Department of Justice shall notify the State Department of Social Services, or county licensing agencies, either by telephone and by subsequent confirmation in writing by first-class mail, or by electronic or facsimile transmission. At its discretion, the Department of Justice may forward one copy of the fingerprint cards to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the fingerprinted individual.

(c) For purposes of this section, live-scan technology is operational when the Department of

Justice and the district offices of the Community Care Licensing Division of the department live-scan sites are operational and the department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

General Comment:

Commenter #14 CACFS testified that “[t]hese new regulations are having an enormous impact on the recruitment and training activities of CCL-licensed facilities and driving up their costs in these areas. The Cost Estimate, Statement of Significant Adverse Economic Impact on Business, Statement of Potential Cost Impact on Private Persons or Business, and Small Business Impact Statement should be amended to include a comprehensive analysis of this impact.

Response:

The Administrative Procedure Act does not require CDSS to perform a comprehensive analysis of the financial impact of regulations on businesses. In determining the financial impact of these regulations, in particular the clearance or exemption prior to initial presence, CDSS determined that the impact was minimal because it did not expand who was subject to background check only when an individual could be in the facility. Further, these regulations could in fact save providers the expense of training an individual who would later be disqualified from receiving an exemption.

General Comment:

Commenter #24 testified that “In general, CCLC supports this rulemaking effort because it clarifies and standardizes procedural requirements like character references, non-exemptible offenses, simplified exemptions, transfers of exemptions, and rules applicable to volunteers in child care facilities. Thus, these regulations give all stakeholders -- child care providers, their employees and family members, the parents of children in care, and the administrative law judges who hear appeals of CDSS decisions -- fairer notice of the requirements, timetables, and sanctions that govern the process.

“Nonetheless, these regulations still leave a number of issues unresolved, of which CCLC will address three in the following specific comments.

- 1) “CDSS should consider less restrictive alternatives, including reducing the length of the waiting periods that must elapse after a person’s conviction, incarceration, probation, or parole before CDSS will consider granting a criminal record exemption. *See* 22 CCR §§80019.1(k), 101170.1(k), and 102370(k). The fact that the regulations identify these time frames as “presumptions” which may be rebutted by a substantial and convincing showing of “good character” is positive, but this laudable approach is seriously undercut by the way in which the regulations are drafted. CDSS should emphasize throughout the regulations that these time frames are rebuttable presumptions, encourage applicants who can demonstrate good character to apply for licenses before the waiting period has run, and confirm that licenses shall be granted to eligible applicants who rebut the presumption prior to the expiration of the waiting period.

- 2) “In the interest of protecting the privacy rights that are guaranteed by Article I Section 2 of the California Constitution, CDSS should make two changes to the new rules governing personnel records and parental notification in family child care homes. Specifically:
  - a. “CDSS should clarify the highly confidential nature of the personnel records that family child care providers must now maintain on employees and volunteers, as set forth in 22 CCR §102416.1 *et. seq.* CDSS should explicitly require that personnel records *not* be accessible to anyone in the household other than the provider, nor to any other employees, or to parents of children in care.
  - b. “CDSS, and *not* the family child care provider, should be responsible for the parental notification requirements set forth in 22 CCR §102370.1(b)(2) - (b)(2)(A). This method would be more effective than disclosure by providers, or would be as effective and less burdensome to providers, and it would insure that the information conveyed to parents does not disclose inappropriate details about the nature of the crime that has caused an individual to be removed from a family child care home.
- 3) “CDSS should clarify the distinctions between these regulations and those applicable to two other groups of child care providers: employees of school districts and license-exempt providers seeking Trustline clearance. That is:
  - a. “These regulations do not apply at all to teachers who are “employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance” through the teacher credentialing process.

“While CDSS uses identical criteria in background checks for licensed child care providers and for applicants for Trustline clearance, the timing of such clearances is entirely different and calls for different administrative priorities in the processing of applications.”

Response:

Though the criterion appears to be restrictive, it is, in fact, flexible. The criteria that a person with convictions must meet before the Department will consider granting an exemption is modified on a case-by-case basis depending on the specifics of the case, the police and court documents, and the evidence of rehabilitation submitted.

CDSS disagrees with the comment that it should emphasize that the time frames are rebuttable throughout the regulations. The regulations clearly state that the time periods create rebuttable presumptions that may be overcome if the person can demonstrate good character. Repeating this standard throughout the regulations would be unnecessarily repetitive.

Regarding the privacy of personnel records in Family Child Care Homes, the Department does not regulate all aspects of a licensee's employer-employee relationships. Licensees should seek legal counsel from an attorney competent in labor law to ascertain what laws apply to the confidentiality of personnel records. The Department's concern as to personnel records is to ensure that licensee's maintain and provide records to Departmental personnel upon request in order to determine if the licensee is in compliance with the laws and regulations governing the operation of a licensed facility.

Regarding parental notification of an excluded individual in Family Child Care Homes, Health and Safety Code Section 1596.8712 states that the licensee must notify the parents. This requirement is in statute and cannot be altered without legislative action.

In response to comment three above, these regulations may apply to teachers who are employees of child care and development programs under contract with the State Department of Education who have completed a criminal record clearance process through teacher credentialing because some programs require teachers to also become cleared through CDSS. It would be repetitious and unnecessary to include in these regulations all of the existing sections of law and regulation that include exceptions to the CDSS fingerprinting process. CDSS respectfully disagrees with the comment that the time of clearance for Trustline applicants and the processing of Trustline applications is entirely different from other licensing categories. Trustline applications are processed through the Criminal Background Check Bureau exactly the same as licensees, employees and others. The commenter may be referring to the fact that Trustline applicants may start to receive payment for their services prior to the applicant receiving a clearance. The actual processing of the clearance or exemption is the same for Trustline applicants who are not requesting to be present in a licensed facility, but instead, are seeking reimbursement for providing license exempt child care.

#### General Comment:

Commenter #24 testified that "Before final approval of the regulations, DSS must include in its "final statement of reasons" submitted to the Office of Administrative Law (OAL) a determination with supporting information that no alternative considered by the agency would be more effective in carrying out Cal. Gov't Code § 11346.9 (a) (4) (West 2002).

"DSS contends in its Initial Statement of Reasons that imposing the notification requirement on family child care providers is "necessary to implement Health & Safety Code Sections 1596.871 and 1596.8712." However, neither statutory section requires that this burden be placed on the family child care provider rather than on CDSS. While expeditious delivery of information is an important policy goal, it is just as attainable by having CDSS handle parental notification, and this will also ensure that providers are not at risk of disclosing more information than is allowable under the law, such as the nature of the crime exempted.

"This risk is not trivial. Providers are uncertain about how much information to disclose to parents, and after a parent receives such disclosure, the parent often will insist on knowing what crime was committed even after being told that the provider is not allowed -- under privacy laws -- to share that information. Providers who disclose too much information run the risk of violating other laws, and open themselves up to claims for defamation and invasion of privacy. Placing the burden of disclosing this information on providers also creates unnecessary tensions

in their relationships with their employees and with their customers, the families of the children they care for, when the burden should rightfully be the responsibility of the licensing agency. It would be less administratively burdensome for CDSS to handle the initial notification to parents, as well as to respond appropriately to followup inquiries from parents.”

Response:

This comment is beyond the scope of these regulations. The commenter is referring to regulations that became effective August 7, 2002.

General Comment:

Commenter #24 testified that “CDSS must also assess the regulations’ potential for adverse economic impact on California business enterprises and individuals, and must avoid the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. Cal. Gov’t Code § 11346.3 (West 2002). Before final approval of the regulations, DSS must provide the Office of Administrative Law (OAL) with a “final statement of reasons” setting forth the basis for rejecting any proposed alternatives that would reduce the adverse impact on small businesses. Cal. Gov’t. Code § 11346.9(a)(5) (West 2002).

“These parental notification obligations have a particularly harsh impact on small business because they fall only on family child care providers, with no corresponding requirement applicable to child care centers. Thus, rather than reducing the adverse impact on small businesses, CDSS has exacerbated the economic burden on the smallest of the small businesses that comprise California’s child care provider community. Requiring CDSS to disclose the appropriate information regarding the individuals who have been removed from a family child care home will take less of a toll on those small businesses than the procedure set forth in these emergency regulations.”

Response:

Health and Safety Code Section 1596.8712 states that Family Child Care Home licensees must notify parents of children in care of excluded individual. This requirement is in statute and cannot be altered without legislative action.

General Comment:

Commenter #24 testified that “CDSS should clarify that these regulations do not apply at all to teachers who are “employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance” through the teacher credentialing process.

“The criminal record of school employees cannot be disclosed without a court order in California. Cal. Educ.Code §44230(a) gives teachers a different expectation of privacy than that which is contemplated by these regulations. Moreover, teachers in California public schools get credentialed under Title 5 of the California Education Code, while family child care providers and teachers in child care centers must be licensed by CDSS under the California Health & Safety Code and Title 22 of the California Code of Regulations. Yet there are credentialed teachers in California who work in child care facilities, particularly child care and development programs under contract with the State Department of Education. Health and Safety Code §1596.871(H) explicitly recognizes that such teachers are not subject to CDSS’ background check regulations. The regulations should be similarly explicit.”

Response:

These regulations may apply to teachers who are employees of child care and development programs under contract with the State Department of Education who have completed a criminal record clearance process through teacher credentialing because some programs require teachers to also become cleared through CDSS.

General Comment:

Commenter #24 testified that “While CDSS uses identical criteria in background checks for licensed child care providers and for applicants for Trustline clearance, the timing of such clearances is entirely different and calls for different administrative priorities in the processing of applications.

“CDSS’ reliance on the same background check criteria for **both** licensed child care facilities **and** California’s Trustline system is a welcome step towards uniform standards. However, in processing the paperwork for background checks, CDSS should be mindful of the differences between the two systems. In licensed child care facilities, the background check and criminal records exemption must occur before an individual may work or be present in a child care facility. In license-exempt care, on the other hand, an individual may already be on the job or in the home and the Trustline clearance may not occur until later.

“While CDSS may appropriately use the same personnel to process both types of criminal records paperwork, its priorities should differ depending on whether the child care facility is licensed or license-exempt. That is, for licensed facilities, it would be appropriate to prioritize the processing of exemptions for the least serious criminal offenses, so that the facility can be licensed – or its employee can begin work – as soon as possible. For license-exempt facilities, however, it would be appropriate to prioritize the review of the most serious offenses, so that individuals with records of such offences who are already present and not eligible for an exemption may be removed as soon as possible.”

Response:

The Department has internal procedures in place that take into account various factors such as the seriousness of the crime as well as several other factors. Department of Social Services needs to maintain its flexibility to prioritize exemptions based the seriousness of the crimes as well as issues such as workload.

General Comment:

Commenter # 24 CCLC testified that “CDSS should consider less restrictive alternatives, including reducing the length of the waiting periods that must elapse after a person’s conviction, incarceration, probation, or parole before CDSS will consider granting a criminal record exemption. *See* 22 CCR §§80019.1(k), 101170.1(k), and 102370(k). CDSS should emphasize that these time frames are rebuttable presumptions, encourage applicants who can demonstrate good character to apply for licenses before the waiting period has run, and confirm that licenses shall be granted to eligible applicants who rebut the presumption prior to the expiration of the waiting period.

“These provisions define specific lengths of time that must pass following a conviction, incarceration, or period of parole or probation before an individual is eligible to apply for a criminal records exemption.

For example:

- An individual who has been convicted of a nonviolent misdemeanor must wait one year.
- An individual who has been convicted of two nonviolent misdemeanors – or one nonviolent felony – must wait four years.
- An individual who has been convicted of two nonviolent felonies must wait 10 years.
- An individual who has been convicted of a violent misdemeanor must wait 15 years.

“CDSS justifies these time periods as “one method of assuring that the individual has been rehabilitated.” However, this “one method” is likely to have a negative effect on women with a criminal history who are attempting to transition from welfare to work by entering the child care field. The child care field offers one of the most accessible entry points for low and moderate-income women: women trying to move off of public assistance, immigrant women, women who have left situations of domestic violence, and others who are attempting to rebuild their lives and the live of their children by engaging in meaningful and valuable employment. The negative impact of CDSS’ time-lapse provisions undermines the societal – and legislative – goals of helping them make this move. Moreover, some situations that might involve a nonviolent felony (e.g, an arrest during recent antiwar protests, or a survivor of domestic violence seeking to make ends meet by selling marijuana) do not provide a fair basis for making an individual wait four years before becoming a licensed child care provider.

“CDSS itself acknowledges that its specific time periods are not definitive; rather they are “rebuttable presumptions” that can be overcome by individuals “who can demonstrate substantial and convincing evidence of good character.” See 22 CCR §§88019.1(l), 101170.1(l) and 102370.1(l). Unfortunately, the repetition of these time frames throughout the regulations – in the Definitions as well as sections on residential facilities, child care, and family child care – seems to vest them with a kind of power that contradicts the notion of a rebuttable presumption.

“Before final approval of the regulations, CDSS must include in its ‘final statement of reasons’ submitted to the Office of Administrative Law (OAL) a determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose of the regulation **or** would be as effective and less burdensome to affected private persons than the regulation.<sup>1</sup>

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<sup>1</sup> Cal. Gov’t Code § 11346.9(a)(4) (West 2002).

“CCLC urges CDSS to consider the following changes to the regulations as ways to attain a less burdensome alternative:

- First, re-order the provisions so that the language about “rebuttable presumptions” *precedes* the provisions setting forth the specific time periods. This re-arrangement will clarify that the waiting periods are not immutable rules.
- Include a statement in each waiting-time provision that it is a rebuttable presumption that can be overcome with a demonstration of good character. Two obvious examples of the bases for such rebuttals are successful completion of substance abuse treatment; and favorable comments from previous employers or from parents who used the provider for informal, license-exempt child care.
- Consider a tiered system of exemptions where an individual would receive one level of exemption in order to work in child care in an entirely supervised capacity, and then a subsequent level of exemption – based on the passage of additional time – in which s/he could work in an unsupervised capacity.

“This section should also include a provision which mandates that a request for the transfer of an exemption shall be granted so long as the person who is applying to transfer the exemption to a new position or employer has not had any intervening disqualifying conduct. The procedure for approving or denying such requests for transfers should involve expedited processing, so the person can transfer employment without a period of unemployment.

Response:

Though the criterion appears to be restrictive, it is, in fact, flexible. The criteria that a person with convictions must meet before the Department will consider granting an exemption is modified on a case-by-case basis depending on the specifics of the case, the police and court documents, and the evidence of rehabilitation submitted.

As to the two-tiered approach, CDSS does issue conditional criminal record exemptions based on the specific facts in a case. Any restrictions placed on the exemption must be sufficient to protect the children and clients in care.

As to expediting the transfer of a criminal record exemption, CDSS must review all transfers to determine if the crime is now non-exemptible, whether a mistake was made in the granting of the original exemption, and whether the individual meets the current criteria to receive an exemption. An individual's history of compliance and good character is considered in this review process. An individual does not have a statutory right to transfer an exemption, only a criminal record clearance. The transfer of an exemption is currently done on an expedited process through CDSS's regional offices.

General Comment:

Commenter #24 testified that “In the interest of protecting the privacy rights that are guaranteed by Article I Section 2 of the California Constitution, CDSS should highlight the confidentiality of the personnel records that family child care providers must now maintain on all employees and volunteers, by including a provision in 22 CCR §102416.1 *et. seq.* that ‘personnel records shall not be accessible to anyone in the household other than the provider, nor to any other employees or to the parents of children in care.’

“These regulations impose an entirely new set of record-keeping obligations upon family child care providers. Specifically, 22 CCR §102416.1 requires such providers to maintain personnel records on all employees and volunteers. For employees, such records must include the employee’s full name, driver’s license number, dates of employment, date of birth, home address and phone number, information about prior training, past experience, names of former employers, job duties, termination date if applicable, and three signed CDSS forms — Notice of Employee Rights (LIC 9052), Statement Regarding Criminal Record History, and either a criminal record clearance or an exemption. 22 CCR §102416.1(a). For volunteers, the records are truncated and depend on whether the individual must be fingerprinted in accordance with 22 CCR §102370.

“While it is good practice to maintain personnel records, and while these are good guidelines for what should be in a personnel file, they may create traps for the unwary family child care provider. Personnel files should be treated with utmost confidentiality, particularly where – as here – they may include information about a criminal record exemption. They should not be accessible to anyone in the household other than the provider and the individual employee, as guaranteed by Cal. Labor Code §1198.5. They should be kept in a locked cabinet, and made available only to those people who have a legitimate business need for access to the files.

“CCLC urges CDSS to consider adding the following language to the preamble of 22 CCR §102416.1(a) in order to convey the need for confidentiality:

- Personnel records shall be maintained on each employee in such a way as to protect the employee's privacy interests. No employee's personnel records shall be accessible to anyone in the household other than the provider and the individual employee on whom the records are kept. They shall contain.....

“A similar preamble should be added to the companion provision regarding volunteers, 22 CCR §102416.1(b).”

Response:

Regarding the privacy of personnel records in Family Child Care Homes, the Department does not regulate all aspects of a licensee's employer-employee relationships. Licensees should seek legal counsel from an attorney competent in labor law to ascertain what laws apply to the confidentiality of personnel records. The Department's concern as to personnel records is to ensure that licensee's maintain and provide records to Departmental personnel upon request in order to determine if the licensee is in compliance with the laws and regulations governing the operation of a licensed facility.

General Comment:

Commenter #24 testified that “In the interest of protecting the privacy rights that are guaranteed by Article I Section 2 of the California Constitution, the California Department of Social Services -- and *not* the family child care providers -- should be responsible for the parental notification requirements set forth in 22 CCR §102370.1(b)(2)-(b)(2)(A) and §102417(r). This method would be more effective than disclosure by providers, or would be as effective and less burdensome to providers, and it would insure that the information conveyed to parents does not disclose inappropriate details about the nature of the crime that has caused an individual to be removed from a family child care home.

“The legal reasons for this proposed modification reiterate CCLC's comments on the CDSS' parental notification regulations now codified at 22 CCR §101218.1(b)(8) and §102419(a)(8). First, requiring CDSS – rather than providers – to inform parents that an individual has been removed from a facility because of a criminal record would be more effective or would be as effective and less burdensome to providers.<sup>2</sup> Second, modifying the regulations to require disclosure by CDSS rather than providers would reduce the economic impact of the regulations on small businesses.<sup>3</sup>”

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<sup>2</sup> Cal. Gov't Code § 11346.9 (a)(4) (West 2002).

<sup>3</sup> Cal. Gov't. Code § 11346.9 (a)(5) (West 2002).

Response:

Please see response to immediately preceding comment.

General Comment:

Commenter #1, Jack E. Christy of the California Association of Homes and Services for the Aging (CAHSA), testified that “The justifications promulgated by DSS to give this regulation emergency status do not constitute an emergency. DSS reasons do not meet the criteria for the extraordinary process of bypassing usual notice and comment procedures for new regulations. As Justice Oliver Wendell Holmes observed, process is the essence of democracy. That portion of the public affected by these regulations has a right to be informed of the proposed regulations and to have their comments seriously considered *before* the State makes such far-reaching changes to existing practice.

“CAHSA also objects to labeling these regulations "emergency" because it detracts from the detailed showing the Department must make to support its claim that 95 percent of all clearances are completed in three days, which justifies the change to clearance prior to employment. Californians are entitled to a thorough and rigorous analysis of this claim because it affects all people connected to assisted living. Making these regulations emergency regulations has abrogated that discussion, and the opportunity to examine the legal basis changing the regulations.

“These regulations are being made applicable to all types of DSS providers despite the type of clients served, or characteristics that make each provider type unique in comparison to the others. Children and adults, even dependent adults, are not the same. The threats to guard against for children are not always the same threats to dependent adults. The uniformity of these regulations comes at the expense of providers of services struggling to keep their operations affordable and within the requirements of mandated expectations. Mandating these regulations across all provider types demonstrates a lack of appreciation for the real contradictions inherent in their requirements. While this regulation may be appropriate for providers dealing with children, it doesn't mean they're appropriate for providers dealing with adults ... even dependent adults.

“The new practice of requiring completed background checks before an employee may be present in the facility is problematic for providers and prospective employees, and will have an adverse effect on residents. Moreover, this new procedure may well put some providers out of compliance with the number of staff needed to provide appropriate resident care.

“Employee turnover among RCFE providers is high for a variety of reasons. Hence, there is a continuing need to identify and recruit new employees. Prohibiting employment until after the background check means that providers will not be able to hire new staff in a timely way, often even if the prospective employee has a "clean" record. Since the emergency regulation prohibit providers from doing background checks to develop a pool of qualified people for when an opening occurs, openings must be filled on a "catch as catch can" basis. Even in the best of circumstances ( e.g., a three day turnaround on a background check) this means a delay in hiring. The delay will cause the loss of qualified employees who cannot wait for clearance before earning a living. In some areas of the state this will disrupt services to those most in need of care. It's not difficult to envision a scenario where the challenge of identifying and qualifying a needed employee, which is delayed for any number of reasons out of the provider's or the

prospective employee's control, results in the provider being "out of compliance" in staffing, the prospective employee unable to care for his/her family, and the resident going without the services he/she contracted to have provided.

“For prospective employees with a criminal record, no matter how minor, these regulations operate to deny them employment in RCFEs altogether. This is so because of the long delay in checking backgrounds that are not absolutely clean. DSS states that "dirty" cases may take 60 days or more before clearance. No facility can wait 60 days to hire a needed caregiver and a prospective employee cannot wait 60 days to earn a living. This result is unfair to both the facility and the worker.

“The previous standard for whether a background check was required focused on *client contact*. The emergency regulations broaden that concept to prohibit *presence in the facility*, an ill-defined, arbitrary limitation unrelated to client contact. Since *presence in the facility* could result in civil penalties and even revocation of license it must be defined and due process structures incorporated to protect providers from inappropriate penalties.

“CAHSA members are concerned that there are not sufficient safeguards against inappropriate removal of a cleared employee after reporting an arrest. An arrest is not a conviction and short of extraordinary circumstances should not be grounds for arbitrary removal from the facility. CAHSA expects greater elucidation of the aggravating factors that must be present to remove someone simply for an arrest.

“These emergency regulations do not serve residents, RCFE providers, or caregivers. They should be withdrawn, re-worked with greater input from providers, residents, and labor, and submitted to the public in the normal regulatory process of review and comment *before* being implemented. While the Department "feels" the legal basis for implementing this change in regulations is met, CAHSA respectfully urges DSS to recognize the reality facing effected providers and that more needs to be done to accommodate providers and workers concerns before such a change in regulations is implemented for residential assisted living for the elderly.”

Response:

The Department’s Finding of Emergency has been reviewed and the Department’s rationale not questioned.

These regulations are consistent across all categories to enable a person to transfer from one facility type to another. If the Department developed different review standards for each category then an individual would have to apply for another exemption with another set of standards if he/she wanted to work in another type of licensed facility.

95 per cent of all responses are received within three business days. To further speed the delivery of this information, the Department created an on-line clearance listing where the licensee can view clearances the instant they are received from the Department of Justice. When an individual’s name appears on that clearance list, he/she can begin working. Individual’s with criminal histories (10 per cent of all background checks conducted) will encounter increased delays or, if convicted of

specified serious crimes, will not be able to work or reside in a facility at all.

All facilities are required to have qualified, background cleared substitutes in the event of an emergency such as staff illness or a staff person quitting without notice. Staffing ratios should not be compromised while a background check is conducted on a new hiree.

Statute requires, not allows, the Department to shift to clearance or exemption prior to work when 95per cent of all Department of Justice responses are received within three working days. This criteria has been achieved.

The term “initial presence” is taken directly from statute. The Department realizes that this creates an interpretation problem. The intent of the statute and the regulation is not to prevent an uncleared person from walking in the door of a facility to fill out personnel documents, attend an orientation or other situations addressed in the comments. The intent of the statute and the regulation is to address volunteers subject to a background check as “...employment, residence ...” would not apply to volunteers.

The Department will amend the regulations for clarification.

CAHSAs comments regarding the removal of an individual with an arrest is not within the scope of these regulations.

### **Oral Comments**

#### **Oral Comment:**

Commenter #33 presented oral testimony as follows:

I'm Charles Skoin, Jr. representing the Community Residential Care Association of California. “[O]n behalf of the Association, I support the policy of having good criminal record exemption procedure, but I have concern with the requirement that individuals must be fingerprint cleared, [underline cleared], prior to being present in the facility. The new procedure could and has developed the possibility of losing potential employees who are not willing to wait to be cleared and get a job. They can get a better job at the fast food restaurants without any waiting period. We'd like the Department to consider the prior regulations requiring employees to submit fingerprints prior to contact with residents, with the additional requirements of being cleared within 20 days. The cost of fingerprints also is still a burden to the facility owners and should be shared by all categories in the social service programs requiring fingerprint clearance.”

#### **Response:**

Statute requires, not allows, the Department to shift to clearance or exemption prior to work when 95 per cent of all Department of Justice responses are received within three working days. This criteria has been achieved.

Oral Comment:

Commenters #31 (written) and #34 (oral) presented similar testimony as follows:

“I represent RES Coalition, a nonprofit business league representing over 2500 residential care provider beds in Southern California for the developmentally disabled. After careful analysis and feeling the emergency application of background check changes, RES Coalition has really kind of changed its position. Even though we advocate that we need to protect our consumers, our homes, we also believe that it goes against doing business for several reasons.

“First of all, initially it was set up that the clearances would occur within 72 hours. We're finding now that that figure is not 100 percent, but it's something less than 100 percent. We feel it's probably around 90 percent. This leaves the background checks of people that we're pursuing to bring on board, they're not getting that check. And therefore, it's creating a hardship on our labor force requirement in the homes. Having to wait three to five days prior to hiring an individual creates a situation where we're not staffing our homes adequately. And on several occasions we've had Regional Center and Licensing come in and fine us because we have not had adequate staffing. And this requirement is a detriment to that position. We feel that our suggestion to help this situation is in fact, if we could bring people in, until we get the waivers or the approval under direct supervision so that these people are not operating on their own, this would certainly help the situation. And we feel that this is probably the best stuff to be taken at this point in time. That's our position.”

Response:

95 per cent of all responses are received within three business days. To further speed the delivery of this information, the Department created an on-line clearance listing where the licensee can view clearances the instant they are received from the Department of Justice. When an individual's name appears on that clearance list, he/she can begin working. Individual's with criminal histories (10 percent of all background checks conducted) will encounter increased delays or, if convicted of specified serious crimes, will not be able to work or reside in a facility at all.

All facilities are required to have qualified, background cleared substitutes in the event of an emergency such as staff illness or a staff person quitting without notice. Staffing ratios should not be compromised while a background check is conducted on a new hiree.

Oral Comment:

Commenter #35 presented oral testimony as follows:

“...I'm here this morning with two hats on, I suppose. First of all, I am the Legislative Liaison for Gray Panthers, California, a grassroots advocacy group, and the Congress of California Seniors in that same category. But the second hat I wear is as the former director of an adult healthcare facility, followed by directorship of Senior Companion Program, which provided people to go into homes. And I first of all would like to state that we all categorically support the fingerprinting of workers before they are allowed to work in any home or facility. We don't

believe that it is a deterrent to workers to wait two days or so. The average person who applies for a job anyway often has to wait while the employer makes a decision. We've talked to the Department of Justice regarding Lifescan and we feel that it is -- we know that it is being implemented more and more across the state and soon will be available very widely. And in the interim, manual fingerprints can be accepted. So we would strongly urge that you make these regulations permanent for the sake of the safety of seniors, who are just as important as the children where we have similar regulations in place.”

Response:

The Department thanks the commenter for their support.

Oral Comment:

Commenter #36 presented oral testimony as follows:

“...I'm Sister Mary Grace Puchal, Executive Director of East Bay Services to the Developmentally Disabled and I also represent the provider/vendor community in the East Bay in Alameda and Contra Costa Counties. And we certainly support the criminal record background and the fingerprinting process. This is certainly important to safeguard the people we serve. That we have people of utmost integrity and good qualities working and providing the very, very best services. I struggle with this because there is a margin between the ideal timeframe and lived reality, and we're finding that when we interview people -- and in our agency we actually do our own investigation. We ask staff to -- we ask a prospective staff person to sign a paper that they're willing to have a background check. We do our own quickly, and at the same time put in the Lifescan process.

“We're finding that we have a couple of employees -- we have a couple of people that have applied with us that were waiting eight months for a response, were waiting, you know, six months for a response...The Department of Justice I think moves it, but then it somewhere gets stuck in the Department of Social Services. And, in fact, I think right now we've been calling and we've been told not to call. We even got a call recently saying, "Do you still want this processed?" It's seven months and the person is still waiting. And we said, "Yes." And they said, "We'll get right back to you." And we're still waiting a month. And I know that, you know, people are short staff, and I know that with the budget cuts there's talk about a 16 percent cut in staffing. With that, I think we have to really look at what impact this is going to have on services. What impact it's going to have on services to some of the most vulnerable people in our society, the aging, the people that are mentally retarded.

“I also want to mention another thing that maybe needs to be looked at, and that is we had an employee recently who went through all the fingerprinting and was cleared and was cleared with the criminal background, and then we found out that the person was on the Megan list. And I have no idea how that got through. And I think that we have to be very cautious about that. And I know there are Penal Codes that protect people and say that if you work with adults, it's okay, just so you don't work with children. But we're looking at the aging. We're looking at perhaps people that are severely retarded. And these are vulnerable people in our population, and we've

got to protect their safety and well-being. So I also think that needs to be looked at. That we should make sure that that's looked at carefully

“Anyway, I ask you to help us put some speed on this so that there is a reality between, you know, the ideal three days. Now, it does happen where people will do the Lifescan and in three days we'll get a response. But if somebody was arrested for something seven, ten years ago, then it puts -- and if it isn't a serious situation, it still puts a hold on everything. So I respectfully ask that that be looked at so that we don't really encumber good staff to work with the people of our state.”

Response:

All facilities are required to have qualified, background cleared substitutes in the event of an emergency such as staff illness or a staff person quitting without notice. Staffing ratios should not be compromised while a background check is conducted on a new hiree.

Convictions requiring that an individual register as a sex offender (criteria for Megan’s List) are non exemptible convictions, regardless of the facility category. An individual with this type of conviction would not be allowed to be employed by, reside in or be present in any type of facility.

### **Specific Numbered Comments**

Sections 80001(d)(6) and (f)(1)

Comment:

Commenter #20, LSNC testified that these sections should be clarified so it is clear that a criminal record clearance can be issued even when there has been an arrest. Use of the word “however” in the regulations is confusing and LSNC submitted the following suggested amendments:

“~~Department of Justice Clearance~~” means an individual has no felony or misdemeanor convictions reported by the ~~California Department of Justice~~. FBI, including those who ~~However, the individual~~ may have been arrested with but who had no criminal conviction, those convicted of a minor traffic offense or those adjudicated as a juvenile.

Response:

CDSS disagrees with the comment. The language proposed by CDSS is clearer and more concise. The "Department of Justice Clearance" does not include criminal record information from the FBI. In its discretion, CDSS is not required to wait for FBI criminal summary information before granting a license or allowing an individual subject to the criminal background check process to be present in a licensed facility.

Section 80001(r)(1)

Comment:

Commenter #20, LSNC testified that this section should be revised to make it clear that a fixed period of time is not required, but rather that many factors, from a non-exclusive list are considered and submitted the following suggested amendments:

“Rehabilitation” means ~~that~~ the reestablishment of good character, as determined by consideration of the seriousness of the crime, the period of time since the conviction, together with any education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, ~~or~~ community service, references, or other factors which assist indicate an individual’s in-reestablishing good character.

Response:

The Department will revise the definition and will incorporate portions of LSNC’s recommendations.

Section 80001(s)(2)

Comment:

Commenter #20, LSNC testified that “‘Simplified Exemption’ refers to the ‘regulations’ promulgated by the dept, (sic) but does not cross reference the section with the actual provisions. This definition should include the reference to the appropriate section.”

Response:

CDSS has determined that it is not necessary to provide this cross reference in the definition section. If all of the definitions were cross-referenced to their applicable sections this would add unnecessary verbiage and length to the regulations.

Section 80019(b)(6)

Comment:

Commenter # 17 CAADS testified that “Adult Day Programs are able to utilize volunteers who are exempt from fingerprinting if they meet certain conditions. Also, non-direct care staff are exempt from fingerprinting. ***We recommend that the new hire be able to be employed while waiting for clearance, but should be subject to the existing exemption regulations of a volunteer,*** pursuant to Title 22, Division 6, Chapter 1, Section 80019(b)(6). These regulations include total supervision of the employee, who is never left alone with participants, and a prohibition on the employee to provide any client assistance. These restrictions will be lifted once clearance is obtained. This would allow a new hire to be on site for orientation, training, and completion of pre-hire paperwork.

If the phrase “prior to initial presence in a license facility” remains unchanged throughout this regulations package, Adult Day Programs throughout California will experience the following negative impacts on their program, directly affecting California’s frail elder population and adults with cognitive or physical impairments:

Response:

The term “initial presence” is taken directly from statute. The Department realizes that this creates an interpretation problem. The intent of the statute and the regulation is not to prevent an uncleared person from walking in the door of a facility to fill out personnel documents, attend an orientation or other situations addressed in the comments. The intent of the statute and the regulation is to address volunteers subject to a background check as “...employment, residence ...” would not apply to volunteers.

The Department will amend the regulations for clarification.

With the implementation of clearance or exemption prior to work, the Department no longer has to order the removal of individuals convicted of violent misdemeanors or felonies. If employees were allowed to “volunteer” until receipt of their clearance or exemption, the Department would have to reinstitute the removal and removal verification process. Additionally, the Department does not have the resources to monitor compliance with the requirement that the individual is never alone with clients.

Section 80019(d)(2)(B)

Comment:

Commenter # 17 CAADS testified that “To address *necessity* and *clarity*. 1) Does this [section] mean that if a facility administrator hired a non-direct care staff and wanted to obtain a background clearance, they may not do so? This removes the ability of an ADP administrator to exceed the regulatory standards for a hiring process should this be their policy. By amending the language as recommended above, it clarifies the intent of restricting facility administrators to only submit fingerprints of residents, potential employees or contract employees who may work occasionally for that facility. 2) Contract, temporary staff will need to be utilized more frequently in order to meet staffing ratio requirements. Unless the regulation above is amended to permit temporary contract workers to submit fingerprints, the ability of the facility to be in compliance will be further jeopardized.

The commenter also provided suggested amended language as follows:

“A licensee or an applicant for a license may not submit, or enable another to submit under the licensee’s or the applicant’s **authority**, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside or be employed, or contract with ~~provide care and supervision to, or have contact with clients at the licensee’s or applicant’s facility.~~”

Response:

This subsection is being deleted because CDSS has determined that it may discourage licensees from fingerprinting individuals who may in the future work in their facilities. The problem that led to the inclusion of this subsection no longer exists because the fingerprint fee exemption statute has been amended.

Section 80019(e)

Comment:

Commenter # 14 CACFS testified that “Section 80019 (e) requires that all individuals subject to a criminal record review must obtain a DOJ clearance or a CDSS exemption “prior to employment, residence or initial presence in a licensed facility.” This phrase is ambiguous and open to multiple and conflicting interpretations. Therefore, the regulations should be amended to clarify its meaning and intent.

Based on our contacts with CCL staff, it is our understanding that this phrase is intended to preclude individuals who have not yet received a DOJ clearance or CDSS exemption from assuming any responsibility for the care and supervision of client children residing at a facility licensed by CCL or in a FFA-certified home, and from having unsupervised, regular, or frequent contact with the client children. We have also been told by CCL staff that:

- The new regulations do not prevent providers from hiring individuals, and providing them with orientation and training, prior to obtaining a DOJ clearance or CDSS exemption, as long as the prospective employees are not allowed to have unsupervised contact with the client children.
- The new regulations do not prevent providers from holding interviews and pre-employment orientation sessions with individuals applying for employment, or families interested in becoming FFA-certified foster parents, in licensed facilities, as long as the prospective employees or foster parents are not allowed to have unsupervised contact with the client children.
- New employees, for whom a DOJ clearance or CDSS exemption has not yet been obtained, may be physically present in the same licensed facility as client children, but unlike the prior CCL requirement, they may not assume any responsibility for the care and supervision of client children residing at a licensed facility and they may not have unsupervised, regular, or frequent contact with the children.
- Some licensees conduct pre-employment “observations” in order to give applicants some appreciation of what the job entails and to give the prospective employer an opportunity to see how the applicants respond to the children. Under the new regulations, licensees may continue to have job applicants, as part of the interview process, visit their licensed facilities to observe the client children and their interaction with current staff. However, these

“observations” must be limited to a relatively short period of time, the job applicant may not be paid by the licensee for his time, may not be left alone with the children, and may not provide care, supervision, or services for the children.

The regulations should be amended to clarify the phrase “prior to employment, residence or initial presence in a licensed facility” so that licensees, CCL field staff, and others will be able to interpret it consistently and in a way that gives licensees flexibility in their recruitment, hiring, training, and other personnel activities, as long as the health and safety of clients is protected in a reasonable manner.

Response:

The term “initial presence” is taken directly from statute. The Department realizes that this creates an interpretation problem. The intent of the statute and the regulation is not to prevent an uncleared person from walking in the door of a facility to fill out personnel documents, attend an orientation or other situations addressed in the comments. The intent of the statute and the regulation is to address volunteers subject to a background check as “...employment, residence ...” would not apply to volunteers.

The Department will amend the regulations for clarification.

Section 80019(e)

Comment:

Commenter # 14 CACFS testified that “Section 80019(e) permits an individual, who has a criminal record clearance associated with another CCL-licensed facility, to begin working with the client children at a different facility as soon as a request to transfer the existing clearance has been made. The individual does not have to wait until the transfer has been approved by CCL. However, for an individual with a criminal record exemption, Section 80019 (e) prohibits him/her from working with the client children until the transfer of the existing exemption has been approved by CDSS.

The regulations should be amended to permit an individual with a criminal record exemption to begin working with the client children as soon as a request to transfer the existing clearance has been made.

The CDSS criminal record exemption process, including the processing of requests to transfer existing criminal record exemptions, often takes weeks (and sometimes months) to complete. The length of time varies enormously and cannot be predicted in advance. This will place a huge burden on employers, as well as prospective employees. It is unreasonable to automatically require an individual who has already been granted a criminal record exemption in the past to wait for a lengthy and unspecified period of time before starting work at a different facility.

Response:

Exemption transfers are reviewed to determine if the crime for which the exemption was granted is now a non exemptible crime and to check to see if the person has been convicted of additional crimes since the date the exemption was granted. The Department understands that delays are problematic and has assigned exemption transfer reviews to field exemption analysts to speed the process.

Section 80019(e)(1)

Comment:

Commenter #12 the California Child Care Resource & Referral Network registered their concern that with the current crisis with child care staffing that this new requirement will further bind child care programs from hiring staff necessary to meet their licensing requirements. Without the ability to hire staff in a timely manner, programs run the risk of operating out of compliance because they are unable to obtain staff with appropriate clearances. Assurances from DSS indicate that the LiveScan system turnaround time for the clearance of 95 percent of fingerprints submitted is three business days. Members, however, indicate that it is typically several weeks before a fingerprint clearance is completed. The discrepancy in the time frame is unclear at this time, but warrants a review prior to the implementation of this change. There are also geographic locations, particularly rural areas, where LiveScan is less accessible thus limiting the availability of this expedited process.

The California Child Care Resource & Referral Network also stated that, “[f]urthermore, there is no comment in the Statement of Reasons that would indicate a need for this change. There is no evidence to suggest that a significant number of licensees or employees who have begun work in a child care facility prior to a criminal record clearance have nonexemptible crimes or other violations prohibiting or limiting an individual from working in a child care facility.”

The California Child Care Resource & Referral Network also recommended reviewing the time period from when an individual submits their fingerprints through the LiveScan system and when they are actually cleared to begin working in a child care program and to assess the overall availability of the LiveScan process in rural counties.

Response:

95 per cent of all responses are received within three business days. To further speed the delivery of this information, the Department created an on-line clearance listing where the licensee can view clearances the instant they are received from the Department of Justice. When an individual’s name appears on that clearance list, he/she can begin working. Individual’s with criminal histories (10 per cent of all background checks conducted) will encounter increased delays or, if convicted of specified serious crimes, will not be able to work or reside in a facility at all.

All facilities are required to have qualified, background cleared substitutes in the event of an emergency such as staff illness or a staff person quitting without notice. Staffing ratios should not be compromised while a background check is conducted on a new hiree.

Logistically, submitting fingerprints using Livescan should not be a problem. There are over 280 Livescan sites statewide with one in every licensing regional office.

Statute requires the Department to shift to clearance or exemption prior to work when 95 per cent of all Department of Justice responses are received within three working days. Because this criteria has been achieved, the Department is not required to demonstrate that a significant number of licensees or employees who have begun work in a child care facility prior to a criminal record clearance have nonexemptible crimes or other.

#### Section 80019(e)(1)

##### Comment:

Commenter #20 LSNC testified that “[t]his section should be clarified to indicate that the criminal record exemption includes those covered by the simplified exemption process” and submitted a suggested phrase as follows:

“Obtain a Department of Justice clearance or a criminal record exemption, including those approved through the simplified exemption process set forth at Section XXX, as required by the Department or ...”

##### Response:

It is not necessary to add verbiage to this phrase because a criminal record exemption processed in accordance with the simplified criteria is nonetheless a criminal record exemption. If CDSS adopted the language proposed by the commenter it may be interpreted that a simplified exemption is something less than a full criminal record exemption.

#### Section 80019(h)

##### Comment:

Commenter # 17 CAADS testified to address **necessity and authority**. This [section] creates a harsher penalty for a criminal background check violation, which is subject to administrative snafus, and is being enforced for under a theory of *potential* harm, than a penalty for an *actual* health and safety violation. Also, does this language mean that a license can be suspended or revoked without giving a citation first? Section 80019(h) should tie into Section 80019(g) as a second step to reprimanding the violation of Section 80019(e). Commenter # 17 CAADS recommended that at minimum there should be a clear finding of potential for reasonable harm before such as drastic action is taken, and an appeals process for Sections 80019(g) and (h) be developed or referenced if it is already implied under another section of law or regulation.

Commenter # 17 CAADS also provided the following suggested amendment to the section:

~~“Violation of Section 80019(e) may result in a denial of the license application or suspension and/or revocation of the license. Sixty (60) days after citation of a violation of Section 80019(e) and if the violation is not rectified, the Department may deny the license application or suspend and/or revoke the license.”~~

Response:

The intent of this section is to emphasize the seriousness of allowing an individual to work or reside in a facility with out obtaining a clearance or an exemption. An individual with an extensive criminal history including sex abuse crimes against a child could be working in a facility having unsupervised contact with children if a licensee failed to obtain a clearance or exemption before allowing that contact. Such a serious violation may warrant formal discipline of the license as opposed to the issuance of a citation and plan of correction.

Section 80019(l)

Comment:

Commenter #20, LSNC testified that “[t]his section needs to be amended to include a good cause provision extending the time to report any subsequent arrest, conviction or parole. Obviously a person unable to call for emergent situations should not be penalized for failure to comply with this provision. Such good cause should include, but not be limited to, lack of access to phones, hospitalization, family crisis, and court appearances.

Response:

The Department has deleted this subsection.

Section 80019(m)

Comment:

Commenter # 17 CAADS testified that this section should be repealed to address **authority** and **clarity**. What is the definition of “any member of the public” and “affected individual?” Under what **authority** does the Department have to verify criminal records from “any member of the public?” The department should be able to obtain first hand information from law enforcement sources rather than rely on what might be considered “hearsay” from any member of the public.

Response:

The intent of this section was that verification and confirmation would be obtained from the courts or law enforcement agency. The section will be amended for clarification.

Section 80019.1(a)(2)

Comment:

Commenter # 17 CAADS testified that specificity on the types of felony is necessary to address clarity since the definition of a “felony” is broad. There are many types of felony convictions, including non-violent felonies.

Response:

Health and Safety Code Section 1522(c)(3) requires that a person convicted of any felony be removed from the facility. CDSS has no discretion in the identification of which felonies warrant temporary removal.

Section 80019.1(a)(5)

Comment:

Commenter #12 the California Child Care Resource & Referral Network agrees with the provisions in Sections 80019.1(a)(1) through (4), but are concerned with (a)(5) “Any other person ordered to be removed by the Deptment.” The section fails to allow for any clear authority for the removal of an individual and prohibits the ability of an individual to appeal their removal from a facility. The California Child Care Resource & Referral Network also recommended that this section be removed from the code or clarify under which circumstances, other than those already noted, that an individual can be removed from a child care facility by CDSS.

Response:

Authority and circumstances that warrant removal or exclusion can be found in Health and Safety Code Sections 1522 and 1558. CDSS does not have the authority to remove this requirement from the code. That is the Legislatures purview. The individual does have an appeal right if the licensee's or the individual's request for an exemption is denied. Anyone with a conviction is disqualified by statute from being present in a licensed facility. That is a condition the Legislature has placed on individuals working in CDSS licensed facilities.

Section 80019.1(a)(5)

Comment:

Commenter # 17 CAADS testified that this section should be repealed to address authority and necessity because this language is too broad and unclear. A blanket authority to remove any person from the facility exceeds the authority under the exemption provisions. There should be cause to remove a person.

Response:

Authority and circumstances that warrant removal or exclusion can be found in Health and Safety Code Sections 1522 and 1558.

Section 80019.1(d)

Comment:

Commenter # 17 CAADS testified that to address clarity, more specificity on the procedures granting exemptions is necessary because it is not clear who will decide how and when to grant exemptions. Additionally, there needs to be more clarity as to what can and cannot lead to an exemption. Currently, the process of approving an exemption is left to the discretion of a department analyst. Additional oversight should be implemented and standards developed to ensure exemptions are appropriate and consistently applied in accordance with policy standards. If the Department finds it necessary to remove an employee, how will they go about doing this? Public removal of staff should be kept to a minimum to avoid negative repercussions to the program.

Response:

Please see Sections 80019.1(k)(1) through (7). These subsections list the criteria an individual's criminal history must meet to be eligible for an exemption. In addition, the Department's Community Care Licensing Division's (CCLD) internal process for reviewing and evaluating an individual's criminal history and his/her exemption request is outlined in the CCLD's Evaluator Manual. You may view the manual on the Community Care Licensing website ([www.cclcd.ca.gov](http://www.cclcd.ca.gov)). Click on "On-Line Evaluator Manual".

The Department does not manually remove individuals. If an individual must be removed, the Department will send a notice to the licensee and order the person's removal. The licensee must return a Confirmation of Removal form within 5 days of receipt of the removal notice. If the individual is not removed, the licensee will be cited and assessed an immediate civil penalty. Please see section 80019.1(a) and (b).

Sections 80019.1(d)(2) and (d)(3)

Comment:

Commenter # 17 CAADS testified that these sections be amended to address clarity and consistency. What is the difference between "may cease processing the exemption request and close the case" and "may deny the exemption request?" The phrase "may cease processing the exemption request and close the case" is unclear. What is the definition of a "dependent family member?" The terms "spouse" and "dependent family member" do not make sense applied in an Adult Day Program setting. Typically a spouse or dependent family members are not on the premises unless employed or just visiting for a short time.

Commenter # 17 CAADS also provided the following suggested amendments to these two sections.

Amend Section 80019.1(d)(2) to:

“If the individual who requests a criminal record exemption is an employee or resident ~~other than a spouse or a dependent family member~~ and does not submit the information requested in the Department’s written notice within 30 days of the date of notice, the Department may deny the exemption request ~~the Department may cease processing the exemption request and close the case.~~”

Amend Section 80019.1(d)(3) to:

“If the individual who requests a criminal record exemption is an applicant, or licensee, ~~spouse or dependent family member~~ and does not submit the information requested in the Department’s written notice within 30 days of the date of notice, the Department may deny the exemption request.”

Response:

Title 22, Division 6, Chapter 1, Articles 1 through 8 apply to other facility types in addition to Adult Day Care facilities. These other facility types include facilities that may also be the residence of the licensee and his/her family members such as Small Family Homes, Adult Residential Facilities and Certified Family Homes.

Regarding Sections 80019.1(d)(2) and (3), there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Sections 80019.1(d)(2) and (d)(3)

Comment:

Commenter #20, LSNC testified that “[t]hese sections provide that if the individual who requests a criminal record exemption does not submit the information requested in the Department's written notice within 30 days of the date of the notice, the Department may cease processing the exemption request and close the case. These sections should have a subpart that states that if the individual requests an extension of this time, that the department shall grant 30 days for the first request, and an additional 30 days for good cause.”

Response:

CDSS oftentimes does grant an extension if an individual provides good cause for doing so. CDSS determined that it did not want to grant an extension in all cases because individuals and licensees sometimes wait until the last minute to start to gather documents and other evidence.

Section 80019.1(f)

Comment:

Commenter #20, LSNC testified that “[t]his section should have a third factor added: ‘the relevance of the nature of the crime to the employment sought.’”

Response:

CDSS does consider the nature of the crime and employment sought when it grants conditional exemptions. An unconditional exemption allows the individual to work in any type of facility as long as the exemption is transfers from one facility type to another. If CDSS only granted criminal record exemptions based on the nature of the crime to the individual's current job duties, the individual would have to go back to CDSS every time he or she changed job duties. That is not a practical solution and would slow up considerable the entire criminal background process.

Section 80019.1(j)(1)

Comment:

Commenter #20, LSNC testified that “[t]his section presumes the applicant is not a good character if the person ‘Makes a knowingly false or misleading statement regarding: (A) Material relevant to their application for a criminal record clearance or exemption.’ The term ‘knowingly false or misleading’ should be clarified. People often are confused about the precise result of the prosecution, for example, not understanding the effect of sealed or expunged records (which normally are not reported for employment purposes), pleas of nolo contendere, conditional sentences (such as dismissal of charges upon payment of restitution), restitution without time served, etc. Some contacts with the criminal justice system could be quite old.

“Such reports should be certified ‘to the best of my knowledge,’ especially as they are supported by FBI and DOJ criminal justice clearances.”

Response:

The burden of proving that an individual knowingly made a false or misleading statement is quite high. CDSS has to prove by a preponderance of the evidence that the individual knew that the statement they were providing was false. If an individual explains why they thought they did not have to report a conviction, CDSS reviews their explanation to determine if the individual had a reasonable belief that they did not have to report the conviction. For those who knowingly provide false information, such behavior is indicative of dishonesty which is an important character trait when working among the state's most vulnerable populations. The individuals have unsupervised exposure to financial information, medical information, and other highly confidential information that could be used to harm a child or client.

Sections 80019.1(k), 101170.1(k) and 102370(k)

Comment:

Commenter #20, LSNC testified that “[t]hese sections should provide for less restrictive alternatives, including reducing the length of the waiting periods that must elapse after a person's conviction, incarceration, probation, or parole before CDSS will consider granting a criminal record exemption. While the timeframes are a useful starting point, CDSS should emphasize that they are rebuttable presumptions. CDSS should encourage applicants who believe they can demonstrate good character to apply for licenses before the waiting period in which rehabilitation is presumed has run, and confirm that licenses shall be granted to eligible applicants who rebut the presumption prior to the expiration of the waiting period.

“The child care field offers one of the most accessible entry points for low and moderate-income women: women trying to move off of public assistance, immigrant women, women who left situations of domestic violence, and others who are attempting to rebuild their lives and the lives of their children by engaging in meaningful and valuable employment. The negative impact of CDSS' time-lapse provisions undermines the societal – and legislative – goals of helping them make this move. Moreover, some situations that might involve a nonviolent felony – such as shoplifting or perjury – seem to be an unfair basis for making an individual wait four years before becoming a licensed childcare provider.”

“CDSS itself acknowledges that its specific time periods are not definitive; rather they are ‘rebuttable presumptions’ that can be overcome by individuals ‘who can demonstrate substantial and convincing evidence of good character.’ See 22 CCR §§80019.1(l), 101170.1(l) and 102370.1(l). Structurally, however, the repetitive statement of these time periods – in the Definitions as well as sections on residential facilities, child care, and family child care – makes it more difficult for those applying prior to the end of the stated time periods. CDSS should also

consider other alternatives to these fixed time frames, such as a tiered system of exemptions, based upon such factors as the seriousness of the crime, the relation of the crime to the licensed activity and the presence of a supervisor.

“We therefore urge CDSS to make the following changes to the regulations:

- First, re-order the provisions so that the language about "rebuttable presumptions" precedes the provisions setting forth the specific time periods. This rearrangement will clarify that the waiting periods are not immutable rules.
- Include a statement in each waiting-time provision that it is a rebuttable presumption that can be overcome with a demonstration of good character.
- Include consideration of the nature of the crime in relation to the provision of childcare. For example, if perjury is the felony, but the underlying crime was a misdemeanor, the case should be judged under the misdemeanor provisions. Similarly, financial felonies should have a shorter time frame for a presumption of rehabilitation when the childcare position does not include working for others and/or access to business funds or accounts.
- Consider a tiered system of exemptions where an individual would receive one level of exemption in order to work in childcare in an entirely supervised capacity, and then subsequent level of exemption – based on the passage of additional time – in which s/he could work in an unsupervised capacity.

“This section should give a provision for the presumption in favor of granting the exemption for an individual who currently has an exemption, who is applying to transfer the exemption to a new position/employer without any intervening disqualifying conduct. Such a procedure should involve expedited processing, so the person can transfer without a period of unemployment.

“Finally, the time period should be shortened. 2 years for 2 or more non-violent misdemeanors and 5 years for non-violent felonies would be more appropriate as a baseline. Similarly, the simplified exemption, which only applies to 1 non-violent misdemeanor conviction, should be triggered at 2 years, since the conviction.”

Response:

Refer to previous general comments regarding reducing the time period for violent misdemeanors, and the Department's responses regarding the regulations are clear that these are rebuttable presumptions. The factors the commenter lists as part of a suggested tiered system are already considerations in the exemption process. As to consideration of financial crimes, CDSS disagrees with the commenter's assertion that these crimes should have a shorter presumption. The majority of financial crimes involve dishonesty. A licensee or employee's veracity is a character trait that is necessary in all aspects of a licensed facility, from record keeping, reporting of incidents, to handling of residents' funds. As to the transfer process, an individual does not have a statutory right to transfer an exemption only a criminal record clearance.

CDSS has determined that it must retain discretion in the transfer of exemptions for the following reasons: a county may have made an error in granting the exemption, the crime may now be non-exemptible, or new facts have been received involving the facts surrounding the conviction.

Sections 80019.1(k)(1)-(5)

Comment:

Commenter #12 the California Child Care Resource & Referral Network indicated that the period of time required past completion of incarceration or probation in this section appears to be excessive. Of particular concern are Sections 80019.1(k)(1) and (2) that require an individual to wait one year following completion of incarceration or probation for one nonviolent misdemeanor or four consecutive years following completion of incarceration or probation/parole after two or more nonviolent misdemeanors removes the option for an individual to prove that they have rehabilitated themselves or taken action to move toward rehabilitation. Not knowing if other similar professions require the same length of time following incarceration or probation prior to approval of a criminal record exemption, perhaps the teaching profession or home health workers warrant similar scrutiny.

California Child Care Resource & Referral Network recommends 1) reviewing and comparing similar requirements in the teaching and home health worker professions 2) consider less alternative restrictions as reducing the length of time prior to allowing the review and processing of an exemption 3) allow applicants who can demonstrate rehabilitation and good character, to do so, and 4) allow individuals to have limited approval that allows them to work only under the supervision of another individual who has full clearance.

Response:

The time periods do not "remove the option for an individual to prove that they have rehabilitated themselves or taken action to move towards rehabilitation" because they are rebuttable. The individual has an opportunity in the exemption process to provide evidence of rehabilitation and good character.

An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one or four years since incarceration or completing probation without subsequent criminal activity if convicted of one nonviolent misdemeanor or two or more nonviolent misdemeanors respectively, is minimal and is a good indicator of rehabilitation.

With the implementation of clearance or exemption prior to work, the Department no longer has to order the removal of individuals convicted of violent misdemeanors or felonies. If employees were allowed to "volunteer" until receipt of their clearance or exemption, the Department would have to reinstitute the removal and removal verification process. Additionally, the Department does not have the resources to monitor compliance with the requirement that the individual is never alone with clients.

#### Section 80019.1(q)

##### Comment:

Commenter #20, LSNC testified that “[t]his regulation should be modified to provide a different period of review. We recommend that when denying an exemption, the CDSS specify what aspects of the person's history lead to the denial, indicate what type of rehabilitative steps would make an exemption likely, and identify a reapplication period. The CDSS would not be required to grant a subsequent exemption, as the person must still demonstrate good character. But such provisions would help guide individual applicants, and would have a more flexible case-by-case approach to reapplication. In an alternative, a 6 month period for those who can demonstrate additional rehabilitation steps or 1 year generally would be more appropriate. In particular, it makes no sense to deny individuals a right to reapply for an exemption when in less than two years they would meet the presumption of rehabilitation under the time period guidelines.”

##### Response:

An individual with a criminal conviction is statutorily disqualified from licensure and employment in a community care licensing facility. CDSS may not grant an exemption unless it can make a finding that "substantial and convincing evidence" exists "to support a reasonable belief" that the individual is of such good character as to justify issuance of the exemption. The individual bears the burden of providing to CDSS documentation and evidence that will support such a finding. Furthermore, CDSS does not have the resources to provide such detailed information to those who do not qualify for an exemption.

#### Section 80019.1(q)(1)

##### Comment:

Commenter #20, LSNC testified that “CDSS should base any time barring reapplication from the date of the initial decision, not from any hearing decision or petition. Otherwise, CDSS would be unfairly penalizing individuals who exercised their rights to appeal.

##### Response:

CDSS disagrees with the comment. When an individual is denied an exemption and appeals the denial, he or she is granted a hearing. At that hearing, the individual may present the most current documentation and testimony as to their rehabilitation and good character. If the appeal is denied, the individual was at the time of the hearing found to not be rehabilitated and of such good character as to warrant the granting of an exemption. If the individual were allowed to reapply from the date of the decision after a hearing, this would not provide CDSS with an adequate time period in which to determine if the individual is currently qualified to receive an exemption.

Section 80019.1(q)(3)

Comment:

Commenter #20, LSNC testified that this section “should be clarified that CDSS will review any reapplication according to the regular exemption guidelines. As written, it suggests that the Department's action on the reapplication is entirely within its discretion.” LSNC suggested amending language as follows:

If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 80019.1(q)(1) above, the Department may, ~~in its discretion~~ according to the provision in CCR Title 22, Sections 80001 et seq., grant or deny the subsequent request for an exemption.

Response:

The Department agrees. The regulations will be amended as suggested.

Section 80019.1(s)

Comment:

Commenter #20, LSNC testified that “[i]n considering the granting of a transfer of an exemption, CDSS should have a provision that states if the person was exempted under existing regulations and/or standards that meet the such regulations, has no new criminal problems, and is applying for a similar license/type of work, that the Department must grant the exemption.”

Response:

CDSS must retain its discretion in the exemption process because of the vulnerability of the children and residents in its licensed facilities. A situation may arise where CDSS needs to exercise its discretion by denying an exemption transfer even though the factors listed in the comment above are met.

Sections 80019.1(u) and (u)(3)

Comment:

Commenter # 17 CAADS testified that these two sections should be repealed to address necessity and authority. These regulations should not be retroactive to current employees. There are exempt employees who have proved to provide quality care, and should not be removed from employment just because an exemptible crime becomes non-exemptible.

Response:

This section states that the Department “may” rescind an exemption if the crime for which the exemption was granted becomes non-exemptible. If the individual’s work history demonstrates that they have provided quality care, the Department, in its discretion, may not rescind the exemption.

Section 80019.1(v)(4)

Comment:

Commenter # 17 CAADS testified that to address clarity this section should be amended to include the phrase “that is non-exemptible.” What crimes are inclusive of a subsequent crime? An individual convicted of any subsequent crime is too broad. Why does an administrator need to know if an employee committed a crime that is minor or exemptible? This would conflict with privacy rights of the employee.

Response:

A subsequent crime includes all crimes other than a minor traffic violation. Statute [Health and Safety Code Section 1522(c)(3)] enumerates the non exemptible crimes and states that if the conviction was for “another crime, except a minor traffic violation,” the individual must seek an exemption.

An exemption is granted for a specific crime or crimes provided the individual presents evidence of good conduct and rehabilitation. Being convicted of a subsequent crime, any crime, violates the good conduct and rehabilitation requirement. Provided the subsequent crime is exemptible, the licensee must apply for another exemption on the individual’s behalf that includes the subsequent conviction. Conviction information is not confidential and is readily available through the court system.

Section 80019.1(w)(2)

Comment:

Commenter # 17 CAADS testified that to address clarity, the phrase “appropriate administrative action” needs to be defined.

Response:

This section will be amended to “an Administrative Action”. The type of action taken would depend on whether the individual were an applicant, licensee, spouse or dependant family member who resides in the facility, or an employee. If the Department rescinds a license

applicant's exemption, the action is a license denial. If the Department rescinds a licensee's exemption, or the exemption of a spouse or dependant family member who resides in the facility, the action is a license revocation. If the Department rescinds an employee's exemption, the action is an employee exclusion.

#### Section 80019.1(x)

##### Comment:

Commenter # 17 CAADS testified that to address clarity and consistency, this section should be amended because it conflicts with Section 80019(1). The terminology "subsequent crime" is too broad. Does this include any crime? What is the definition of "appropriate administrative action?"

Commenter # 17 CAADS provided the following suggested amendment to this section:

"If the Department learns that an individual with a criminal record clearance or exemption has been convicted of a subsequent crime that is non-exemptible, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients."

##### Response:

An exemption is granted for a specific crime or crimes provided the individual presents evidence of good conduct and rehabilitation. Being convicted of a subsequent crime, any crime, violates the good conduct and rehabilitation requirement.

A subsequent crime includes all crimes other than a minor traffic violation. Statute [Health and Safety Code Section 1522(c)(3)] enumerates the non exemptible crimes and states that if the conviction was for "another crime, except a minor traffic violation", the individual must seek an exemption.

#### Section 80054(b)(1)

##### Comment:

Commenter # 17 CAADS testified that this section should be repealed since it duplicates Section 80054(b).

##### Response:

The Department agrees and this section has been deleted.

Section 80065(i)(2)

Comment:

Commenter # 17 CAADS testified that to address consistency this section should be amended to be consistent with Section 80065(i)(3). If the Department is given **authority** to permit an individual to be employed during the transfer of a criminal record exemption, as stated in (3), then the Department should also have the **authority** to permit an individual to be employed during the transfer of a criminal record clearance.

Commenter # 17 CAADS also provided the following suggested amendment to the language in this section:

“Request a transfer of a criminal record clearance as specified in Section 80019(f), unless, upon request for the transfer, the Department permits the individual to be employed, reside or be present at the facility, or”

Response:

The suggested amendments are unnecessary because a licensee need only request a clearance transfer and the individual may begin to work or reside in the facility. Exemption transfers must be requested and approved, unless, upon request for the transfer, the Department permits the individual to be employed, reside or be present at the facility. Please see Sections 80019(e)(2) and (3).

Sections 80066(a)(12)(A) and (b)(3)(A)

Comment:

Commenter # 17 CAADS testified that these sections are unclear and need more specificity. What kind of signed statement? Is there a required form? Does the employment application with criminal history questions and a signature suffice for this requirement? Or is this Form LIC 508?

Providers have been told Form LIC 508 is not required as long as the same information is gathered. Does this still apply?

Response:

The Criminal Record Statement (LIC 508) is now a required form. Please see Section 80019(d). Section 80066 will be amended for clarity.

Section 80066(d)

Comment:

Commenter # 17 CAADS testified that these regulations should be amended for clarity and necessity. Some adult day programs have small facilities and not enough storage space to store

past and current personnel records on site. Instead, they store past personnel records at an off-site location which is still accessible to the licensing agency, if necessary. It is not necessary, and sometimes not possible, to store past and current personnel records on site.

Commenter # 17 CAADS provided suggested language for the amendment to this section as follows:

“All current personnel records shall be maintained at the facility site and shall be available to the licensing agency for review.”

Response:

Section 80066(d)(1), not amended in these regulations, permits licensees to retain personnel records in a central administrative location provided they are readily available to the licensing agency, at the facility, upon request.

Sections 87219(b)(3)(F) and (G)

Comment:

Commenter #5 CALA indicated that these regulations that exempt volunteers and fraternal/service organization members establish different requirements for fingerprinting and that it is not clear why the requirements are more restrictive for volunteers of service organizations as compared to volunteers from other sources/affiliations. CALA also indicated that it is not clear how the distinction is defined and submitted two examples of when problems with the inconsistent standards could arise.

Response:

These fingerprint exemptions were placed in the Community Care Facilities Act (Section 1522) by AB 1659, Statutes of 1999. For consistency, these exemptions were placed in all license category regulations.

Sections 87219(b)(2)(C) and (b)(3)(H)

Comment:

Commenter #5 CALA indicated that these sections that exempt visitors of the client providing direct care and supervision and a third party contractor or other business professional send an inconsistent message about the need to fingerprint “private duty attendants.” CALA continued by pointing out that, “Section 87219(b)(2)(C) states that anyone who assists a resident with ADLs must be cleared. In addition, the Evaluator Manual procedure states that ‘Unless determined to be exempt from criminal background check requirements, a privately paid personal assistant must have a criminal record clearance or exemption.’ This appears to conflict with Section 87219(b)(3)(H)(iii), that states an ‘attendant’ who provides direct care assistance to one resident only, does not need to be fingerprinted.”

Response:

These fingerprint exemptions were placed in the Community Care Facilities Act (Section 1522) by AB 1659, Statutes of 1999. For consistency, these exemptions were placed in all license category regulations.

Section 87219(d)(1)(A)

Comment:

Commenter #20, LSNC testified that “[t]his section should be clarified to specifically indicate whether the applicant is required to list pardoned, sealed or expunged records of convictions.

Response:

The Department agrees with the comment and the regulations will be amended.

Section 87219(m)

Comment:

Commenter #20, LSNC testified that “[t]his section provides that the Department can verify criminal records ‘from any member of the public or affected individual,’ and that [in subsection (m)] ‘(1) Upon obtaining confirmation of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.’ This section poses serious problems, as there is no requirement of any prima facie case or reliability of the information. This subsection should be stricken, and rewritten to say that the Department must verify information from third parties with the appropriate enforcement agency before [it] can rely on them.

Response:

This section has been amended as suggested for clarity.

Section 87219.1(a)

Comment:

Commenter #20, LSNC testified that “Subsection (a) requires that CDSS inform any license[e] to immediately terminate any employee who is applying for an exemption. CDSS should not intervene directly in the employment relationship in this way, and instead should advise the licensee to immediately remove, and ‘at a minimum’ suspend employment, while the Department acts upon the information. If the person gets the exemption, there was no need for a termination.”

Response:

This section does not require a licensee to terminate any employee who is applying for an exemption. It requires the licensee to terminate the employment of any employee who has an arrest or conviction listed in Section 1596.871 of the Health and Safety Code. If the terminated and removed employee has an exemptible crime, he or she may seek an exemption after their termination and removal. The language is taken directly from the statute, therefore, CDSS is not in a position to alter it.

Section 87219.1(f)

Comment:

Commenter #20, LSNC testified that “For subsection (f), the factors should also include whether the crime was coerced by another. Examples includes Domestic violence or threats of violence, coercion (such as by a pimp), etc. Pardons and expungements should also be listed as a reason for exemption.”

Response:

CDSS disagrees that "coercion" should be listed as a specific factor. If the individual believes that coercion was a mitigating factor in their conviction, he or she should provide that information to CDSS. Individuals are required to explain the circumstances surrounding their conviction. Pardons and expungements are currently listed as factors to be considered.

Section 87566(b)

Comment:

Commenter # 5 CALA indicated that “[c]urrent Section 87565(e) addresses training requirements for facilities licensed for sixteen or more. Section 87565(f) addresses personnel health status and currently requires volunteers to provide a signed statement ‘affirming that he/she is of good health.’ It is not clear what the ‘health screening documents’ in the emergency regulations are referring to.”

Response:

The commenter is correct, this is an error. The regulations will be amended.

d) Local Mandate Statement

These regulations do impose a mandate upon local agencies but not on school districts. The mandate is not required to be reimbursed pursuant to Section 17500, et seq. of the Government Code because implementation of the regulations will, if anything, result in negligible costs.

e) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

f) Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8(c), a 15-day renotice comment period was provided from June 11 to June 25, 2004. As a result of the 15-day renotice, testimony was received from Joan B. Lee, Chairperson for the Gray Panthers of Sacramento, Eve R. Hershkopf, Senior Staff Attorney for the Child Care Law Center (CCLC) in San Francisco, Cindy Mall, Senior Program Manager, California Child Care Resource & Referral Network (CCCR&RN) in San Francisco, and Doug Johnson, Associate Executive Director, of the California Alliance of Child and Family Services (CACFS). The testifiers' comment and the Department's response follow.

General Comment:

Joan B. Lee testified that, "I have carefully reviewed this document, attached to your notification letter of June 10, 2004, and find it to be very well crafted. I believe that it is evident that the review team and departmental staff who worked on the revision did a very careful job which reflects current policy well. Much of the revisions are already in practice and this just sets the policy in writing.

"A further benefit of these clear regulations is that departmental personnel will have back up to their decisions. They will assure smoother operations of the Criminal Background office.

"As an advocate for good background check systems for all workers, I hope this will serve as a model in other departments and agencies.

"Thank you for including Gray Panthers of Sacramento in your stakeholder input list. We are always happy to research materials to see that the public is well served."

Response:

The Department thanks the testifier for the favorable comments.

Section 80019(q)

Comment:

CCLC selected only one item to comment on at this time because it appears not to have been addressed in the Statement of Reasons. Although the Statement of Reasons was responsive to the majority of comments, it was not responsive in the discussion on page 250 to the recommendation made by Ms. Jodie Berger of Legal Services of Northern California (LSNC) in her discussion of Section 80019(q) that,

“This regulation should be modified to provide a different period of review...a 6 month period for those who can demonstrate additional rehabilitation steps or 1 year generally would be more appropriate. In particular, it makes no sense to deny individuals a right to reapply for an exemption **when in less than two years** they would meet the presumption of rehabilitation under the time period guidelines.” (emphasis added).

CCLC reasserts that “allowing a shorter time period is more consistent with the overall structure of the exemption process, as well as more consistent with the particular sections that determine the relevant period following conviction for an applicant to be eligible to apply for an exemption. We strongly recommend that the proposed regulations be modified to permit the shorter time period for reapplication.”

Response:

The Department has determined that 2 years is a reasonable and appropriate time period to wait before an individual, who has been denied an exemption, may reapply. If an individual’s exemption was denied because he/she did not submit sufficient evidence of rehabilitation, a two year time period is needed to allow the individual to engage in activity that would further demonstrate rehabilitation. Additionally, the two year period wait period is consistent with the license denial reapplication procedure.

Section 101170.1(d)(3)

Comment:

“The California Child Care Resource and Referral Network (Network) would like to take this opportunity to comment on the regulations mentioned above. Our comments at this time are directed solely to the impact of these regulations on TrustLine applicants. The Network contracts with CDSS to administer particular elements of the TrustLine program and works with Child Care Resource and Referral programs, Alternative Payment Programs, County Welfare Departments, license-exempt child care providers and parents as we fulfill our statutorily mandated responsibilities to the TrustLine program. Through our TrustLine-related work, we have accumulated a lot of information about the criminal record exemption process and it’s impact on license-exempt child care providers, parents using exempt care and the children in these exempt care arrangements.

“Because there are not specific regulations for TrustLine applicants, it is our understanding that regulations written for licensees and license applicants are used when processing criminal record exemptions for applicants to TrustLine. All children deserve the protections provided through the criminal background check conducted for both licensed child care providers and those applying to TrustLine. However there are differences between licensed and license-exempt providers that need to be acknowledged in regulation.

**“Comment 1:** In licensed child care facilities, the background check and criminal records exemption must occur *before* an individual may work or be present in a child care facility. However, in license-exempt care that is subsidized by the state of California, the child care provider is already in the home providing care and will cease receiving state funding only when the provider is closed or denied. Therefore, allowing an individual 45 days to request an exemption is a long time to allow care by an individual with a criminal history to care for children while being paid by the state of California. We recommend that no more than 30 days be given to a TrustLine applicant to request an exemption.

**“Comment 2:** The Network requests that the phrase “TrustLine applicant” or “including TrustLine applicants” be included where appropriate to provide guidance to CDSS as to how this type of applicant is treated in the criminal exemption process. Because the TrustLine Applicant is not specifically listed in the regulations, CDSS staff must interpret which sections apply to TrustLine applicants and which don’t – which leads to inconsistency and potentially unequal treatment. For example, it appears that a license-exempt provider should be treated more like a license applicant than any other category listed in regulations (i.e. employee, resident, family member).

**Example A:** Criminal Record Exemption (d) (3) *If the individual for whom the criminal record exemption is requested is an applicant, licensee, TrustLine applicant, spouse or dependent family member and the licensee/license applicant/TrustLine applicant does not submit the information listed in the Department’s written notice within 45 days of the date of the notice, the Department may deny the exemption request.*

**“Comment 3:** In Section (r), it states “*A licensee or applicant for a license may request transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department.*” Can someone registered on TrustLine also transfer their criminal record exemption to a state licensed facility and can someone associated with a licensed facility transfer their criminal record exemption to TrustLine?”

Response:

Comment 1:

A parent who is receiving assistance through the CalWorks program may utilize for subsidized care either a provider who is licensed or a license exempt provider who is a

TrustLine applicant or TrustLine registrant. A provider is not prohibited from caring for a child if his or her application to become a TrustLine registrant is denied.

The individual is no longer qualified to receive a child care subsidized payment, however, since that provider is exempt from licensure he or she may still provide child care services. The Department determined that 30 days was not a sufficient amount of time for all those seeking exemptions, therefore, the regulations were amended by adding an additional 15 days. Also, the requirement that an individual receive a clearance or an exemption before their presence in a facility only applies to the individual's "initial" presence in a facility. If an individual who has received a clearance or an exemption is later convicted of an exemptible crime, they may remain in the facility pending a decision on their request for an exemption. The Department has determined that TrustLine applicants should be processed the same as any other individual with a criminal conviction. Lastly, the Department regulations covering the CalWorks program has determined that payments would only cease when an applicant's case was closed or he or she was denied an exemption. The decision as to when payments should cease is not within the purview of the Community Care Licensing Division.

Comment 2:

Though the criminal record exemption evaluation criteria for persons associated with licensed child care centers and persons on the TrustLine Registry are identical, these regulations apply only to licensed child care centers. Reference to a license exempt program within the regulations that govern licensed facilities would be inappropriate. CDSS exemption review analysts are aware of the specific circumstances that apply to TrustLine Registry exemption applicants and process TrustLine Registry exemptions consistently and equally. Additionally, the Department is not in need of guidance as to how to treat TrustLine applicants because they are treated the same as any other type of "applicant." The term "applicant" is used consistently throughout these regulations. The Department has had no difficulty processing TrustLine applicant criminal record reviews. The problem as stated by the commenter does not exist.

Comment 3:

Comment/inquiry is not within the scope of the 15-day renote changes. However, yes, an individual may request a transfer of their clearance or criminal record exemption from the TrustLine Registry program to CCL and vice versa.

#### Section 80019(e)

#### Comment:

CACFS requested clarification of the phrase "prior to employment, residence or initial presence in a licensed facility."

"In the original emergency regulations, Section 80019 (e) required that all individuals subject to a criminal record review must obtain a DOJ clearance or a CDSS exemption

“prior to employment, residence or initial presence in a licensed facility.” We found this phrase to be ambiguous and open to multiple and conflicting interpretations.

Therefore, we recommended that the regulations should be amended to clarify its meaning and intent.

“Based on our contacts with CCL staff, it was our understanding that this phrase was intended to preclude individuals who have not yet received a DOJ clearance or CDSS exemption from assuming any responsibility for the care and supervision of client children residing at a facility licensed by CCL or in a FFA-certified home, and from having unsupervised, regular, or frequent contact with the client children. We were told by CCL staff that the four types of activity described below would be examples of actions which would not be precluded by this phrase in the emergency regulations.

1. The new regulations did not prevent providers from hiring individuals, and providing them with orientation and training, prior to obtaining a DOJ clearance or CDSS exemption, as long as the prospective employees are not allowed to have unsupervised contact with the client children.
2. The new regulations did not prevent providers from holding interviews and pre-employment orientation sessions with individuals applying for employment, or families interested in becoming FFA-certified foster parents, in licensed facilities, as long as the prospective employees or foster parents are not allowed to have unsupervised contact with the client children.
3. New employees, for whom a DOJ clearance or CDSS exemption has not yet been obtained, may be physically present in the same licensed facility as client children, but unlike the prior CCL requirement, they may not assume any responsibility for the care and supervision of client children residing at a licensed facility and they may not have unsupervised, regular, or frequent contact with the children.
4. Some licensees conduct pre-employment “observations” in order to give applicants some appreciation of what the job entails and to give the prospective employer an opportunity to see how the applicants respond to the children. Under the new regulations, licensees may continue to have job applicants, as part of the interview process, visit their licensed facilities to observe the client children and their interaction with current staff. However, these “observations” must be limited to a relatively short period of time, the job applicant may not be paid by the licensee for his time, may not be left alone with the children, and may not provide care, supervision, or services for the children.”

“In our comments on the original emergency regulations, we recommended that they should be amended to clarify the phrase “prior to employment, residence or initial presence in a licensed facility” so that licensees, CCL field staff, and others will be able to interpret it consistently and in a way that gives licensees flexibility in their recruitment, hiring, training, and other personnel activities, as long as the health and safety of clients is protected in a reasonable manner.

“In Section 80019 (e) in the revised regulations, dated June 10, 2004, the phrase “prior to employment, residence or initial presence in a licensed facility” has been deleted and replaced with “prior to working, residing or volunteering in a licensed facility.”

The formal CDSS response to our original comments included in the Final Statement of Reasons (on page 240 of the copy provided to us by the CDSS Office of Regulations Development) states:

“The term “initial presence” is taken directly from statute. The Department realizes that this creates an interpretation problem. The intent of the statute and the regulation is not to prevent an uncleared person from walking in the door of a facility to fill out personnel documents, attend an orientation or other situations addressed in the comments. The intent of the statute and regulations is to address volunteers subject to a background check as “... employment, residence ...” would not apply to volunteers.

The Department will amend the regulations for clarification.”

“The California Alliance thanks CDSS for responding positively and directly to our concerns by both making the change in the regulatory language and clarifying its intent in the Final Statement of Reasons.”

Response:

The Department thanks the testifier for the favorable comments.

Section 80065(i)

Comment:

CACFS commented that the phrase “prior to employment or initial presence in the facility” is used in Section 80065(i) and is very similar to the ambiguous wording used in the original emergency regulations in Section 80019(e). Section 80065(i) should be amended to use wording consistent with that used in Section 80019(e) in the revised regulations, dated June 10, 2004; i.e. “prior to working or residing in the facility.”

Response:

The Department agrees. This was an oversight that will be corrected in a follow-up, package.

Section 80019(e)

Comment:

CACFS testified that Section 80019(e) permits an individual, who has a criminal record clearance associated with another CCL-licensed facility, to begin working with the client

children at a different facility as soon as a request to transfer the existing clearance has been made. The individual does not have to wait until the transfer has been approved by CCL. However, for an individual with a criminal record exemption, Section 80019 (e) prohibits him/her from working with the client children until the transfer of the existing exemption has been approved by CDSS.

“In our comments on the original emergency regulations, we recommended that they should be amended to permit an individual with a criminal record exemption to begin working with the client children as soon as a request to transfer the existing clearance has been made. The CDSS criminal record exemption process, including the processing of requests to transfer existing criminal record exemptions, often takes weeks (and sometimes months) to complete. The length of time varies enormously and cannot be predicted in advance. This places a huge burden on employers, as well as prospective employees. It is unreasonable to automatically require an individual who has already been granted a criminal record exemption in the past to wait for a lengthy and unspecified period of time before starting work at a different facility.

“We are disappointed that our recommended amendment was not adopted in the revised regulations, dated June 10, 2004. We strongly urge that CDSS reconsider this issue. The requirement for prior approval by CDSS of a transfer of a criminal record exemption creates serious operational problems for CCL-licensed facilities, and thereby has an indirect but negative impact on the children whom they serve. It creates an unnecessary and unjustified burden on the individual applicants and employees affected. It also is a waste of precious CCL staff time, which is now in very short supply following staff reductions and increasing workload.

“Let us consider just one actual case to illustrate this point. One of the executive directors of a member agency of the California Alliance has a criminal conviction as the result of nonviolent actions in an anti-war protest while he was a student in the early 1970s, over 30 years ago. This individual has been granted a criminal record exemption by CDSS and has been allowed to transfer that exemption on a number of occasions. Correctly, CDSS has determined that this old nonviolent offense is not a reason to believe that this individual presents a threat to the health and safety of the clients; nor is it a factor which should be used as a basis for preventing this individual from working in his current capacity. However, every time this individual changes jobs, or his agency opens a new facility, he is required to obtain prior approval by CDSS of the transfer of his criminal record exemption.

“If CDSS were able to review and respond promptly to requests for the transfer of criminal record exemptions, this would not be such a critical issue. But that is not the case. The fact of the matter is that it often takes several weeks, if not months, for an individual to obtain approval (or denial) of such a request.

If CDSS is unwilling to accept the original recommendation of the California Alliance [to amend the regulations to permit any individual with a criminal record exemption to begin working with the client children as soon as a request to transfer the existing clearance has been made], CDSS should consider adopting the following alternative as an amendment to these regulations.

“A category of “transferable criminal record exemptions” should be created by CDSS for individuals whose offenses [because of their age, nature, and circumstances] are determined by CDSS not to be an appropriate basis for denying future transfers of their criminal record exemption to work, or to resume a position with different or greater responsibilities, in any type of CCL-licensed facility. Such an alternative would permit this limited group of individuals to begin working in a different facility, or in a new capacity, as soon as they request a transfer of their criminal record exemption, without having to wait for prior approval by CDSS. It would also streamline the work of CDSS and eliminate unnecessary re-reviews of criminal records for individuals who CDSS has already determined do not pose any health or safety threat to clients in any type CCL-licensed facility, regardless of their specific job responsibilities. Finally, it would continue to permit CCL to require the prior approval of all transfers of criminal record exemptions for other individuals whose criminal history is more problematic and for whom CCL wants to retain the authority to review future transfers of their criminal record exemptions.

“In order to ensure consistency throughout the regulations, the provisions of Section 80065 (i) should also be modified accordingly.”

Response:

The Department is working to speed the exemption transfer process. In the near future the Department will shift the exemption transfer responsibility to the Regional Offices. Following a quick inquiry into the Licensing Information system, Regional Office staff will be able to transfer any exemption that was approved after July 2003. Exemption transfer requests with exemptions approved prior to 7/03 will continue to be sent to the Caregiver Background Check Bureau (CBCB) for review and approval. Currently CBCB processes all exemption transfer requests in less than one week. It is expected that the CBCB review and approval time will continue to improve as all criminal history reports move from hard copy to electronic versions. With the improvements described, the regulation, as currently written, will continue to be accurate as some level of approval will continue to be required before an exemption is transferred.

General Comment:

CACFS testified about the Informative Digest/Policy Statement Overview for the Regulations

“In our comments on the original emergency regulations, we pointed out that these new regulations are having an enormous impact on the recruitment and training activities of CCL-licensed facilities and driving up their costs in these areas. We recommended that the Cost Estimate, Statement of Significant Adverse Economic Impact on Business, Statement of Potential Cost Impact on Private Persons or Business, and Small Business Impact Statement should be amended to include a comprehensive analysis of this impact.

“The formal CDSS response to our original comments included in the Final Statement of Reasons (on page 222 of the copy provided to us by the CDSS Office of Regulations Development) states, in part:

“The Administrative Procedures Act does not require CDSS to perform a comprehensive analysis of the financial impact of regulations on businesses.”

“Leaving aside the issue of whether the APA requires a “comprehensive” analysis of the financial impact or some less in-depth analysis, we find no evidence in the Cost Estimate, Statement of Significant Adverse Economic Impact on Business, in the Statement of Potential Cost Impact on Private Persons or Business, or in the Small Business Impact Statement that any serious analysis of the financial impact was conducted in the development of this regulation package.

“The formal CDSS response to our original comments included in the Final Statement of Reasons goes on to state that:

“In determining the financial impact of these regulations, in particular the clearance or exemption prior to initial presence, CDSS determined that the impact was minimal because it did not expand who was subject to background check only when an individual could enter the facility. Further, these regulations could in fact save providers the expense of training an individual who would later be disqualified from receiving an exemption.”

“Our review of the Final Statement of Reasons shows that several other individuals and organizations made comments about how these regulations create additional difficulties for various types of CCL-licensed facilities to maintain adequate staff. The formal CDSS response to those comments included the following statement:

“All facilities are required to have qualified, background cleared substitutes in the event of an emergency such as staff illness or a staff person quitting without notice. Staffing ratios should not be compromised while a background check is conducted on a new hiree.”

“CDCC acknowledges in the Final Statement of Reasons that 10% of individuals for whom background checks are conducted are found to have criminal histories. However, individuals with a “criminal history” include individuals who have been arrested, but never convicted of any crime. It is our understanding that a large majority of individuals with a criminal history are eventually granted a CDSS clearance (in arrest-only cases) or an exemption (in cases where there was a conviction). However, the weeks and months of waiting for such clearances and exemptions for 10% of all new employees has significantly driven up the costs of recruitment, training, and other activities of CCL-licensed facilities. It also means that they have to maintain a larger pool of employees because the new regulations, in 10% of the cases, will cause a delay in hiring replacement staff. This also drives up the costs of CCL-licensed facilities.

“The changes made in the revised regulations, dated June 10, 2004, do not reduce the impact or the new costs being imposed upon the private nonprofit agencies operating CCL-licensed facilities such as foster family agencies, group homes, and community treatment facilities. These agencies care for children placed through the public child welfare services, juvenile justice, and mental health systems. They receive the vast majority of their funding from the AFDC-Foster Care Program, which is also administered by CDSS. The AFDC-Foster Care payment levels are established by CDSS. The agencies are not permitted charge the families of the children for costs of care and services that exceed the funding provided by the AFDC-Foster Care program. The AFDC-Foster Care payment levels were frozen by the State for fiscal years 2002-03 and 2003-04 and the Schwarzenegger Administration has proposed to freeze them again for 2004-05. This means that these private nonprofit agencies have had to absorb rising operational costs for their facilities with the same level of funding they were receiving for fiscal year 2001-02. The purchasing power of their AFDC-Foster Care payments has declined by nearly 15% over the past three years.

“Before these regulations are finalized, a real analysis of their cost impact should be conducted and included in the Cost Estimate, Statement of Significant Adverse Economic Impact on Business, Statement of Potential Cost Impact on Private Persons or Business, and Small Business Impact Statement.”

Response:

The Department maintains that the financial impact of these regulations is minimal for the following reasons:

- Only 6% of individuals who submit fingerprints must request and wait for approval of a criminal record exemption before they can begin work. 50% of those do not respond to the Department’s exemption needed letter or do not choose to request an exemption.

The Department receives criminal history information on 10%. Of the 10%, 1% have convictions for which an exemption cannot be granted and 3% qualify for a CDSS Clearance.

- CDSS clearances for the 3% that qualify are processed in 5 days or less.

Though the commenter contends that a cost impact analysis should be conducted, statute requires that the Department implement “Clearance prior to Work” and does not state that implementation be contingent on a licensee’s resources or funding.

No further changes have been made to the regulations as a result of the 15-day renounce testimony received.