REGULATION INTERPRETATIONS

AND

PROCEDURES

FOR

CHILD CARE CENTERS
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CHAPTER 1 - CHILD CARE CENTER GENERAL LICENSING REQUIREMENTS

ARTICLE 1 GENERAL REQUIREMENTS AND DEFINITIONS

101151 GENERAL

(a) POLICY

Chapter 1 – Child Care Center General Licensing Requirements do not apply to Family Child Care Homes.

101152 DEFINITIONS

c. (2)(H) - Care and Supervision

POLICY

Facilities that provide care and supervision must be licensed. Care and supervision activities include all basic services that must be provided in order to obtain and maintain a license.

PROCEDURE

Refer to California Code of Regulations Sections 101152 b. (1), 101156, 101157 and 101219.

c. (8) - Completed Application

PROCEDURE

Review Application Booklets for private Day Care Centers (LIC 281A) and for public agency Day Care Centers (LIC 120H) to ensure completeness. Refer to California Code of Regulations Section 101169 and Evaluator Manual Reference Material Section 3-0210.

e. (5) - Exception

PROCEDURE

See Evaluator Manual Reference Material Section 2-5000 and California Code of Regulations Section 101175.
**e.(6) - Exemption**

**PROCEDURE**

Refer to California Code of Regulations Section 101170. Also see Evaluator Manual Reference Material Sections 2-4400 to 2-4900.

**g.(1) - Guardian**

**POLICY**

A guardian is also identified as a person who is exempt from licensure.

**n.(1) – Non-ambulatory**

**POLICY**

In a child care environment, the State Fire Marshal considers physical disability—not the age of children—when determining ambulatory capacity. That is because sleeping facilities (excluding napping areas) are not provided in child care centers.

Accordingly, for fire clearance purposes, all children (including infants) are considered ambulatory unless they are diagnosed with physical disabilities.

Policy regarding bedridden children is as follows:

1. The Uniform Building Code, Section 403, defines a bedridden person as “a person confined to a bed, requiring assistance in turning or unable to independently transfer to and from bed, and unable to leave a building unassisted during emergency conditions.” This does not apply to infants ages 0 to 2 years of age.

2. Bedridden children shall be allowed in child care centers as long as the center does not provide medical care to the child. No bedridden child shall be admitted to a child care center unless the center has secured a bedridden fire clearance.

**PROCEDURE**

See California Code of Regulations Sections 101161 and 101171.
u.(1) – Urgent Need

Refer to California Code of Regulations Section 101181.

w.(1) – Waiver

Refer to California Code of Regulations Section 101175 and Evaluator Manual Reference Material Section 2-5000.
**ARTICLE 2 LICENSING**

**OPERATION WITHOUT A LICENSE**

**POLICY**

**Education Code: Verification of Private School Instruction**

Private schools for grades kindergarten and above must have a current affidavit on file with the Superintendent of Public Instruction in accordance with Education Code Section 33190 (see below.)

**Education Code Section 33190:** Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall between the first and 15th day of October of each year, commencing on October 1, 1967, file with the Superintendent of Public Instruction an affidavit or statement, under penalty of perjury, by the owner or other head setting forth the following information for the current year:

(a) All names, whether real or fictitious, of the person, firm, association, partnership, or corporation under which it has done and is doing business.

(b) The address, including city and street, of every place of doing business of the person, firm, association, partnership, or corporation within the State of California.

(c) The address, including city and street, of the location of the records of the person, firm, association, partnership, or corporation, and the name and address, including city and street, of the custodian of such records.

(d) The names and addresses, including city and street, of the directors, if any, and principal officers of the person, firm, association, partnership, or corporation.

(e) The school enrollment, by grades, number of teachers, coeducational or enrollment limited to boys or girls and boarding facilities.

(f) That the following records are maintained at the address state, and are true and accurate:

(1) The records required to be kept by Section 48222.

(2) The courses of study offered by the institution.

(3) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.

(g) Criminal record summary information has been obtained pursuant to Section 44237. Whenever two or more private schools are under the effective control or supervision of a single administrative unit, such administrative unit may comply with the provisions of this section on behalf of each of the schools under its control or supervision by submitting one report.

(h) Filing pursuant to this section shall not be interpreted to mean, and it shall be unlawful for any school to expressly or impliedly represent by any means whatsoever, that the State of California, the Superintendent of Public Instruction, the State Board of Education, the State Department of Education, or any division or bureau of the department, or any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course unless this is an actual fact.

The Superintendent of Public Instruction shall prepare and publish a list of private elementary and high schools to include the name and address of the school and the name of the school owner or administrator.
PROCEDURE

To verify that a private school has a current affidavit on file for kindergarten and/or above check with the local County Office of Education or visit the California Department of Education private school directory available online at http://www.cde.ca.gov/sp/ps/rq/.

POLICY

Certificate of Operation Issued by Department of Education

Education Code Section 8262.5 (see below) allows the Superintendent of Public Instruction to issue a certificate of operation in contract transfer situations to California Department of Education-funded child care and development facilities when a certificate is necessary for continued operation and the receipt of state and federal child nutrition or child development funding. A completed license application must be submitted within 15 working days of the issuance of the certificate. The certificate of operation expires upon the issuance or denial of a license by the California Department of Social Services.

Education Code Section 8262.5.  (a) In contract transfer situations in programs funded pursuant to this chapter, the Superintendent of Public Instruction may grant a certificate of operation to child care and development facilities pursuant to this section.

(b) For purposes of maintaining continuity of services to children and receipt of state and federal child nutrition and child development funding, the superintendent may grant a certificate of operation to any child care and development facility which meets all of the following conditions:

(1) The superintendent, or his or her designee, has visited the facility and verified, in writing, to the State Department of Social Services licensing agency that the facility has no deficiencies at the time of granting the certificate of operation which would endanger the physical health, mental health, safety, or welfare of the children.

(2) Without a certificate of operation in lieu of a license from the State Department of Social Services, the facility would be ineligible to receive state and federal child nutrition or child development funds.

(c) A facility issued a certificate of operation pursuant to this section shall be deemed to be operating under licensing standards for child care and development facilities specified by Chapters 3.4 (commencing with Section 1596.70), 3.5 (commencing with Section 1596.90), and 3.6 (commencing with Section 1597.30) of Division 2 of the Health and Safety Code and by Title 22 of the California Code of Regulations for the term specified on the certificate.

(d) A facility granted a certificate of operation shall submit a completed license application to the State Department of Social Services within 15 working days of the issuance of the certificate of operation. Failure to meet this requirement will result in the cancellation of the certificate of operation. The certificate of operation shall expire upon the issuance or denial of a license by the State Department of Social Services.
101157  OPERATION WITHOUT A LICENSE (Continued)  101157

PROCEDURE

Licensing staff are directed to honor these temporary certificates of operation and to allow the new contracting agency to submit an application for licensure to Community Care Licensing Division within 15 working days. If an application is not submitted within 15 days and the facility continues to operate, a Notice of Operation in Violation of Law (LIC 195) shall be issued. A copy of the notice shall also be sent to the California Department of Education, Child Development Division.

101158  EXEMPTION FROM LICENSURE  101158

POLICY

Health and Safety Code section 1596.792(a) – (n) lists 14 types of programs or facilities that are an exception to (also known as an exemption from) California Department of Social Services child day care licensure. NOTE: 1596.792(n) Crisis nursery as defined in subdivision (a) of Section 1516 shall remain an exception to licensure only until July 1, 2011 and as of that date is repealed. As operative on July 1, 2011, listed in Health and Safety Code section 1596.792(a) – (m) there are 13 types of programs or facilities that are an exception to licensure

Regulation section 101158(a)(8)(A) and (B) further enumerates the conditions that are to be met for the public and private schools that operate a program before and/or after school for school-age children.

Health and Safety Code section 1596.793 provides that licensure does not apply to recreation programs conducted for children by the Girl Scouts, Boy Scouts, Boy Club, Girls Club, or Camp Fire, or similar organizations as determined by regulations of the department. At this time there are no regulations that define any similar organizations. However, child day care programs conducted by these organizations are subject to California Department of Social Services licensure.

PROCEDURE

Upon a determination by the Licensing Program Analyst that a facility or program meets an exception as defined in Statute or in regulation, there is no requirement for licensure by California Department of Social Services.

OTHER EXEMPTIONS FROM CALIFORNIA DEPARTMENT OF SOCIAL SERVICES LICENSURE

POLICY

There are some separate Education Code and Health and Safety Code sections which provide for exemptions from California Department of Social Services licensure as follows:
Organized camps are not subject to regulation by California Department of Social Services.

Health and Safety Code section 18897: (a) “Organized camp” means a site with program and facilities established for the primary purposes of providing an outdoor group living experience with social, spiritual, educational, or recreational objectives, for five days or more during one or more seasons of the year.

(b) The term "organized camp" does not include a motel, tourist camp, trailer park, resort, hunting camp, auto court, labor camp, penal or correctional camp and does not include a child care institution or home-finding agency.

(c) The term "organized camp" also does not include any charitable or recreational organization that complies with the rules and regulations for recreational trailer parks.

18897.1. "Camper" means any person in an organized camp on a fee or nonfee basis who is a participant in the regular program and training of an organized camp, and who may take on duties relating to such program and training.

18897.2. (a) Except as provided in Section 18930, the Director of Public Health shall adopt, in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, rules and regulations establishing minimum standards for organized camps and regulating the operation of organized camps that the director determines are necessary to protect the health and safety of the campers. Organized camps also shall comply with the building standards of the jurisdiction in which the camp is located, to the extent that those standards are not contrary to, or inconsistent with, the building standards adopted by the Director of Public Health. The Director of Public Health shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for the purposes described in this section. The State Department of Public Health shall enforce building standards published in the State Building Standards Code relating to organized camps and such other rules and regulations adopted by such director pursuant to the provisions of this section as the director determines are necessary to protect the health and safety of campers. In adopting building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 and in adopting such other rules and regulations pursuant to the provisions of this section, the Director of Public Health shall consider the Camp Standards of the American Camping Association.

(b) The Director of Public Health shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 and shall adopt such other rules and regulations pursuant to the provisions of this section establishing minimum standards for intermittent short-term organized camps operated by a city or a county as the director deems necessary to protect the health and safety of...
campers. For purposes of this subdivision, "intermittent short-term organized camps" means a site for camping by any group of people for a period of not more than 72 consecutive hours for that group.

18897.3. Except as provided in Section 18930, the State Fire Marshal shall adopt minimum fire safety regulations for organized camps in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The State Fire Marshal shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of this division for the purposes described in this section.

18897.4. Every local health officer shall enforce within his or her jurisdiction the building standards published in the State Building Standards Code relating to organized camps and the other rules and regulations adopted by the Director of Public Health pursuant to Section 18897.2.

18897.5. The building standards published in the State Building Standards Code relating to fire and panic safety and the other regulations adopted by the State Fire Marshal pursuant to Section 18897.3 shall be enforced in the same manner as is prescribed by Sections 13145, 13146, and 13146.5 of this code for the enforcement of building standards published in the State Building Standards Code relating to fire and panic safety and the other regulations that have been formally adopted by the State Fire Marshal for the prevention of fire or for the protection of life and property against fire or panic.

18897.6. Organized camps shall not be subject to regulation by any state agency other than the State Department of Public Health, California regional water quality control boards, the State Water Resources Control Board, and the State Fire Marshal; provided, that this section shall not affect the authority of the Department of Industrial Relations to regulate the wages or hours of employees of organized camps and this section shall not be construed to limit the application of building standards published in the State Building Standards Code to structures in organized camps.

18897.7. No organized camp shall be operated in this state unless each site or location in which the camp operates satisfies the minimum standards for organized camps prescribed in building standards published in the State Building Standards Code relating to organized camps, and in other rules and regulations adopted by the Director of Public Health and the State Fire Marshal. Any violation of this section or of any building standard published in the State Building Standards Code relating to organized camps or any other rule or regulation adopted pursuant to Section 18897.2 or 18897.3 in the operation of organized camps is a misdemeanor.
California Code of Regulations Title 17 § 30703. Notice of Intention to Operate.

(a) At least 30 days prior to the operation of any camp in any calendar year, written notice shall be sent by the site operator to the local health officer of the city, county, or city and county in which the camp is located, setting forth the name, location and mailing address of the person or agency that owns the camp, the name and address of the person or agency proposing to operate the camp and the proposed dates of occupancy during that calendar year. Camps which operate year-round shall provide only an initial notice of operation.

(b) Written notice shall be sent to the local health officer at least 30 days prior to:

   (1) Construction of any new camp,

   (2) Any major expansion of physical facilities or

   (3) Any changes to items of information required in (a) above.

(c) The local health officer shall acknowledge receipt in writing, within seven days, of said notices and shall, at the same time, send a copy to the State Fire Marshal.

To read more about organized camps visit the California Department of Public Health link below:

PROCEDURE

Request the “camp” provide documented verification from the local health officer that the facility is an organized camp. If the facility fails to provide verification from the local health office that it is an organized camp, the licensing program analyst will determine if it meets any other Statutory exception or exemption from California Department of Social Services licensure, or is otherwise required to apply for child care licensure.
Exemption from Licensure provided in Education Code: After School Education and Safety Program

Education Code Section 8482: There is hereby established the After School Education and Safety Program. All references to it by its prior name, the Before and After School Learning and Safe Neighborhoods Partnerships Program, in this article and other state law shall now identify it by its new name. The purpose of this program is to create incentives for establishing locally driven before and after school enrichment programs both during school days and summer, intersession, or vacation days that partner public schools and communities to provide academic and literacy support and safe, constructive alternatives for youth. The term public school includes charter schools.

8484.3. (a) Programs established pursuant to this article shall not be required to comply with the requirements of other provisions of this chapter or requirements set forth in Chapter 19 of Division 1 of Title 5 of the California Code of Regulations.

(b) Notwithstanding any other provision of law or regulation, a program operated by a city, county, or nonprofit organization pursuant to this article may operate for up to 30 hours per week without obtaining a license or special permit under Chapter 3.4 (commencing with Section 1596.70) or Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code.

POLICY

Indian Child Welfare Act

The Indian Child Welfare Act of 1978 (Public Law 95-608) requires that any facility located off an Indian reservation and providing out-of-home care and supervision be licensed as a community care or child care facility. This applies even if the facility is “licensed” by the Indian tribe or an Indian organization. Community Care Licensing Division has no jurisdiction over the licensure of out-of-home care facilities located on an Indian reservation.

The Indian Child Welfare Act requires that an Indian child be placed in a facility that:

1. Represents the least-restrictive setting;
2. Most nearly approximates a family; and
3. Meets the special needs of the child, if any exist.

Maximize program flexibility through waivers and exceptions to achieve licensure of a range of Indian facilities that substantially comply with licensing standards and do not present life-threatening health and safety risks. (Refer to Evaluator Manual Reference Material Section 2-5000.)
Facilities located on federal government property, including military bases, are exempt from licensure because state laws do not apply on most federal lands. This exemption also applies to facilities located on Indian reservations.

**PROCEDURE**

When facilities located on federal government properties or Indian reservations require and/or request licensure, an application for a license may be processed if the person in charge of operations on the property (e.g., the military base commander, the director, etc.)--or, in the case of Indian reservations, the Indian Tribal Council--agrees to cooperate with all licensing procedures and abide by licensing rules and regulations. This agreement must be obtained on the standard agreement form LIC 996 or LIC 996A, as appropriate.

Additionally, a written agreement from the applicant may be obtained and reflected on the standard applicant agreement form LIC 997 or LIC 997A, as appropriate. The agreements should be signed by the Regional Manager.

Upon completion of an agreement with an Indian Tribal Council, the Bureau of Indian Affairs should be notified. A copy of the agreement should be sent to:

U.S. Department of Interior
Sacramento Area
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California  95825
Attention:  Area Director

The following information is provided as a result of questions posed related to the use of the agreement forms and should clarify any immediate questions related to this process:

1. The LIC 997 or LIC 997A is to be completed in addition to the agreement with the federal entity or Indian Tribal Council (LIC 996 or 996A). This serves as a reminder to the licensee of his/her responsibilities for licensure.

2. The processing of administrative actions should be handled in the same manner as for any other facility. No special procedures are necessary or required. But if an administrative action is initiated, the federal or Indian entity should be informed immediately to elicit their cooperation.

3. This agreement does not limit the authority of federal personnel to investigate abuse complaints. Rather, this agreement provides assurances that licensing representatives are allowed to also conduct investigations when the complaint involves a licensed facility.
PROCEDURE (Continued)

4. If a facility is issued an order for temporary suspension or revocation and the facility fails to cease operation, the federal entity must ensure that all operations cease immediately. If the federal entity fails to cooperate, the agreement can be terminated and the license deemed invalid.

If it is not clear whether a facility meets an exception or exemption to licensure, discuss with your Licensing Program Manager and Regional Manager. A request for policy determination may be submitted through the Assistant Program Administrator.
101161 LIMITATIONS ON CAPACITY AND AMBULATORY STATUS

(a) POLICY

If a licensed child care center (e.g., Head Start) wants to mainstream children with disabilities from a county-/school-operated program into the center, the center must include the mainstreamed children in its capacity. This would be an increase-in-capacity request and, as such, a new fire clearance would be needed, as well as compliance with all other requirements as set forth in Section 101185.

If children with disabilities only “mainstream” during outdoor activities, and there is adequate outdoor space for both groups (75 square feet per child), technically the center needs to include the children with disabilities in its capacity. However, in order to allow “mainstreaming” to occur without placing unnecessary requirements on the licensee (e.g., requiring increased indoor activity space when children with disabilities will not be using that space, etc.), the licensee may submit a plan to the Department that details its proposal for ensuring that health and safety standards are met (e.g., adequate space, supervision, etc.). The Department will review and approve these plans on a case-by-case basis.

Policy regarding bedridden children is as follows:

1. The Uniform Building Code, Section 403, defines a bedridden person as “a person confined to a bed, requiring assistance in turning or unable to independently transfer to and from bed, and unable to leave a building unassisted during emergency conditions.” This does not apply to infants ages 0 to 2 years of age.

2. Bedridden children shall be allowed in child care centers as long as the center does not provide medical care to the child. No bedridden child shall be admitted to a child care center unless the center has secured a bedridden fire clearance.
(b) **POLICY**

The Department is authorized to make determinations as to the ambulatory status of children. (See Section 101152n.(1) and Health and Safety Code Section 13131.)

As required by Section 101220, the ambulatory status of children shall be recorded in their medical assessment. However, the Department may require a reassessment if it believes that the previous assessment of a child’s ambulatory status is incorrect or that the assessment does not reflect the current ambulatory status of the child.

To be considered ambulatory, a child must meet all of the following criteria:

1. The child is not dependent upon a mechanical aid such as a walker, crutches or wheelchair.
2. The child is able to respond both physically and mentally to an audible or visual signal or oral instruction and to evacuate the building unassisted in an emergency situation.
(Continued)

**POLICY** (Continued)

3. The child is able to utilize all escape routes identified in the center’s fire safety/evacuation plan. This includes doors, stairs and fire escapes.

4. The child is able to ambulate a reasonable distance in a brief period of time without the assistance of a mechanical aid.

If a child fails to meet **any** of the above criteria, he/she shall be considered non-ambulatory.

Infants are not subject to the above criteria because age is not considered when determining ambulatory status. Instead, physical disability is considered.

**PROCEDURE**

See Section 101152n.(1) and Section 101171.

If it is believed that a child is non-ambulatory and the child’s current record reflects that the child is ambulatory, the licensee should request the licensee/director to secure from the child’s physician a reassessment of the child’s ambulatory status. In making this request, the evaluator should state in the Facility Evaluation Report (LIC 809) the reasons why he/she believes that the child may be non-ambulatory. This rationale shall be based on the criteria listed under the Policy section above.

If the reassessment indicates that a child is a non-ambulatory and the center does not have an appropriate fire clearance, the following steps shall be taken:

1. The Department shall develop a plan of correction to require the center to make arrangements to have the child relocated. If the center wants to continue to serve the non-ambulatory child, the plan of correction would require the center to immediately request an appropriate fire clearance through the Department.

2. Pending correction as specified in number one above, if the Department believes that allowing the child to remain in the center would present an immediate threat to his/her safety, the Department shall so notify the child’s authorized representative and the State Fire Marshal. This notification shall be in writing. In consultation with the State Fire Marshal, the Department shall also take any other necessary administrative action (e.g., request a revocation and temporary suspension order).
ARTICLE 3  APPLICATION PROCEDURES

101169  APPLICATION FOR LICENSE  

(a)  

POLICY  
This is to clarify the issue of whether management companies utilized by applicants/licensees to operate and manage facilities should be added to the license as co-licensees. If an applicant/licensee agrees to allow a management company to assume responsibility and control over any aspect of care and supervision in the operation or management of the center, the management company must appear on the license as a co-licensee. 

PROCEDURE  
When a co-licensee situation exists, each of the entities is required to meet all applicable requirements that an individual/licensee must meet to obtain a license. The relationship between an applicant/licensee and a management company is not considered a partnership, and Regional Office staff should not require that they demonstrate the legal relationship. The management company is normally an independent contractor. A copy of the contract between the licensee/applicant and the management company must be submitted with the application for licensure. 

(b)  

POLICY  
A child care center may provide care for a small number of school-age children without requiring a separate school-age license. Usually, the school-age children in care are siblings of younger children or children from the immediate neighborhood. In these cases, no more than 12 school-age children may be in care in the child care center. In addition, the center must meet preschool standards for staff qualifications and ratios, and indoor and outdoor space. The plan of operation for the child care center should specify how privacy will be provided for school-age children using bathroom facilities, and for separating preschool and school-age children during activities which may be potentially dangerous to the younger children. If these conditions are met, no waiver is required to allow the child care center to include school-age children in their programs. 

(b)  

POLICY  
Persons inquiring about licensure shall be advised that they must attend an orientation meeting (see Reference Material Section 3-0100). 

The Application Booklet (LIC 281A) is distributed during Component 1 of the orientation session. 

To initiate the application process, Section A of the LIC 281A must be properly completed and submitted as a total package to the Regional Office. Incomplete application packages (Section A) shall be returned. All documents in Section B must be submitted within 90 days of application acceptance or the application is subject to closure. Before making a licensing decision, information received regarding the applicant(s) shall be verified.
PROCEDURE

Refer to Section 101178.

When all required documents in Section A are received, review to assure that the documents are properly completed. If additional information or clarification is needed, contact the applicant by telephone or via a Notification of Incomplete Application (LIC 184). Record all telephone calls on the Contact Sheet (LIC 185) and keep the LIC 185 in the facility file. If a document must be returned to an applicant, keep a copy with a notation that the original was returned to the applicant for correction. If all material is complete, return the facility file to the clerk pending receipt of supportive documents in Section B.

(b)(2)

POLICY

The Americans with Disabilities Act, which was signed into law on July 26, 1990, gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. The term “public accommodations” includes child care centers (child care centers and family child care homes).

Under the Americans with Disabilities Act, an individual (including a child) is considered “disabled” if he/she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment (meaning other people treat the individual as if he/she is disabled whether or not that is actually the case). The Americans with Disabilities Act also prohibits discrimination against an individual who is “associated” with an individual with a disability.

The Community Care Licensing Division is not responsible for enforcing the provisions of the Americans with Disabilities Act.

(b)(2)

PROCEDURE

Because Community Care Licensing Division is not responsible for enforcing the Americans with Disabilities Act, evaluators should not give advice to licensees about their responsibilities under the Americans with Disabilities Act. But licensees should be encouraged to contact the Community Care Licensing Division under the following circumstances:

- If licensees believe that our regulations are an impediment to fulfilling their obligations under the Americans with Disabilities Act.
PROCEDURE (Continued)

- If licensees are asked to make a “reasonable accommodation” under the Americans with Disabilities Act. (This will give Community Care Licensing Division the opportunity to provide input before the parties negotiate a settlement that might not be considered appropriate by the Community Care Licensing Division or the State Fire Marshal. Involving Community Care Licensing Division early in the process will enable the Community Care Licensing Division to effectively raise such issues as the intent of the regulations.)

In addition, the Child Care Advocate will serve as the clearinghouse for child care issues related to the Americans with Disabilities Act. The Regional Offices can still raise questions with the Child Care Program Office, but the Regional Offices should in all cases make the Child Care Advocate in their area aware of the Americans with Disabilities Act issues. The expectation is that the Child Care Advocate will identify regional and/or statewide issues that may be presented to the Child Care Program Office in issue-memo format. The Child Care Program Office will assume responsibility for requesting legal opinions as necessary.

Individuals who wish to file a complaint under the Americans with Disabilities Act, or who wish to obtain further information, should be advised to contact the following agencies:

- The local office of the State Department of Fair Employment and Housing. The State Department of Fair Employment and Housing has a wealth of information and will coordinate with federal agencies as appropriate.

- For additional information, individuals should contact:

  U.S. Department of Justice  
  Civil Rights Division  
  Office on the Americans with Disabilities Act  
  P.O. Box 66118  
  Washington, D.C. 20035-6118  
  (202) 514-0301  
  (202) 514-0383 TT/TDD  
  (202) 514-6193 Electronic Bulletin Board

PROCEDURE

Review the Administrative Organization (LIC 309). If the form lists persons who own more than 10 percent of stock (for corporations), verify that the information required by Section 101169(d)(9) has been obtained. Ensure that the chief executive officer’s fingerprints are obtained in accordance with Section 101170(a).

See Evaluator Manual Section 101185(a) “Policy” for forfeiture of a license.
(d)(3) **POLICY**

If the property is not owned by the applicant/licensee, evidence of control of property (e.g., copy of lease or rental agreement) shall be submitted to the Department. This policy does not preclude the Department from also requiring copies of deeds when necessary to verify who has control of property. Such circumstances would include instances where there are multiple license applications for a single location, or where the Department obtains information that would cause the Department to suspect that the applicant does not have control over the property. Such information shall only be secured at the time of application, or when subsequent circumstances dictate that such proof of control is needed.

**PROCEDURE**

Applicants shall be informed by the Department at orientations, interviews, field visits, etc., of their responsibility to adhere to terms placed on deeds and rental and lease agreements. But the Department shall not be responsible for determining what the terms of such agreements should be and for ensuring that those terms are met.

(d)(10) **POLICY**

The applicant shall disclose on the Applicant Information form (LIC 215) any:

1. Past or present beneficial ownership of 10 percent or more in any child care, community care or health care facility; or any past or present service as an administrator, director, general partner or corporate officer of any child care, community care or health facility.
   a. “Beneficial ownership” is any form of ownership. This includes, but is not limited to, persons who are members of nonprofit corporations, stockholders, trustees, trustors, partners, etc.

2. Revocation or other disciplinary action taken or being taken against a license held or previously held by the entities described in Health and Safety Code Section 1596.95(d).
   a. “Other Disciplinary Action” includes pending or sustained denial actions, Temporary Suspension Orders, pending revocations, injunctions and misdemeanor actions. This information is gathered for character reference purposes only and shall not be considered a reason to cease application review (Health and Safety Code Section 1596.851).

3. Health and Safety Code Section 1596.851 states that if an applicant indicates, or the Department determines, that the applicant previously was issued a child care, residential care facility for the elderly, community care or health facility license that was revoked within the preceding 2 years, the Department shall cease any further review of the application until 2 years have elapsed from the date of the revocation. Such cessation shall not constitute a denial of the application for purposes of Health and Safety Code Section 1596.879, or any other provisions of law.
101169 APPLICATION FOR LICENSE (Continued) 101169

(d)(10) POLICY (Continued)

4. If it is verified that a license has been revoked within the past 2 years, the Department will return the application to the applicant with the standard form letter. (See Appendix.)

PROCEDURE

Upon disclosure of such involvement, or of any revocation or disciplinary action, refer to the List of Administrative Actions to determine or verify that an administrative action was or is being taken.

For applicants who disclose administrative actions or involvement in a health facility, the Department shall contact the California Department of Health Services, Licensing and Certification Division, Office of Certification Section, (916) 324-0047 or Calnet 454-0047. This unit will be able to provide information regarding administrative actions against health facilities.

The List of Administrative Actions is provided as a monitoring tool and consists of all completed administrative actions that resulted in a finding of revocation. The report also provides a master list of sustained denial actions and completed Temporary Suspension Orders. There may also be revocation actions adopted by the Department after the date of a quarterly report. For further clarification on the disposition of a particular case, Regional Offices may contact the Office of the Chief Counsel.

(d)(14) POLICY

Persons required to submit a fingerprint card as part of the process of obtaining a child care center license must also complete a Child Abuse Index Check (LIC 198A). Both the fingerprint card and the LIC 198A should be submitted to the Department. These documents are to be cleared prior to the issuance of a license.

101170 CRIMINAL RECORD CLEARANCE 101170

(a) POLICY

For information on fingerprint requirements for professionals who are employed by a school district (such as speech therapists) and who work alone with children with special needs, please see Issue Nos. 7 and 9 of the section on children with special needs in Evaluator Manual Section 101226 (Health-Related Services). This information also pertains to other employees of a school district.

When the applicant is a corporation, etc., the chief executive officer or other person serving in like capacity must be fingerprinted. “Other person serving in like capacity“ means the person who has the same responsibility as the chief executive officer but who uses another title such as chairman of the board, president, etc.

Direct on-site supervision shall be defined as supervision of an employee or volunteer by an immediate supervisor who is on the center premises where children are provided care.
At the time of application, licensure or change in personnel, licensees shall submit a list of facility position titles with brief job descriptions that include duties performed and the degree of care and supervision, if any, provided to children. The list shall also include the lines of supervision for staff and volunteers and shall specify whether supervision is provided on site. One copy of the list is to be kept at the facility. The Personnel Report (LIC 500) shall be used for this purpose or for licensees of facilities licensed by the State.

Licensees shall identify which positions they think should be exempt from fingerprinting because the persons in those positions do not have frequent and routine contact with children—or are employees of a child development program funded through the California Department of Education and possess a valid teaching credential or permit. The licensee shall sign an affidavit or LIC 500 that states:

“Persons in the following positions are under direct on-site supervision and provide care and supervision to children with only occasional or intermittent contact with the children.”

and/or

“Persons in the following positions are under direct on-site supervision and provide care and supervision to children.”

and/or

“Persons in the following positions are employed in a child development program funded through the California Department of Education and possess a valid teaching credential or permit.”

PROCEDURE

Review the Administrative Organization (LIC 309) to determine the name of the chief executive officer—or person serving in like capacity—of the corporation, etc., and to ensure that appropriate fingerprints have been obtained.

The Department shall determine if a private child care center, or a center operated by a school district, has a child development program by requesting to see its contract, which will be titled “Funding Terms and Conditions.”

Once it is established that a center receives child development funds, verify that the employees possess a credential or permit. If these 2 conditions exist, these employees are exempt from fingerprinting. All other employees subject to fingerprint clearance requirements shall be fingerprinted.

For additional information, see Sections 101169(c) and 101170(d) and Evaluator Manual Reference Material Section 7-0000 through 7-2300.

Clearances through the FBI are required for all individuals subject to a criminal record review obtained through the California Department of Justice. See Evaluator Manual Reference Material Section 7-1300.
PROCEDURE

Prior to the on-site inspection, make a copy of the Personnel Report (LIC 500) to compare with the Personnel Records (LIC 501) in the facility. Additionally, make a copy of the current LIS 531. (See Reference Material Section 8-4010.) Ensure by discussion with the licensee/administrator and verification of the date of employment or residence that all subject persons have met fingerprint requirements.

If there are persons in the facility who are subject to fingerprint requirements and who have not been fingerprinted, cite the facility on the LIC 809 for a Type A deficiency and assess immediate civil penalties in accordance with Reference Material Section 1-0055.

(d)

PROCEDURE

When the Department is notified that an employee who is transferring from one facility to another has previously obtained a criminal record clearance, Regional Office staff shall disassociate the employee from the old facility and associate the employee with the new facility.

(e)

POLICY

See Health and Safety Code Section 1596.871(5) in Appendix B of the Evaluator Manual. It requires that if the applicant is a firm, partnership, association or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, shall be fingerprinted.

Statute allows the chief executive officer or president or chairman of the board to designate a person responsible for the operation of the facility. The designated person must be fingerprinted in lieu of the chief executive officer. In addition, all applicable forms (LIC 200, 215, 503) must be completed and signed by the designated individual instead of by the chief executive officer.

This does not alter the current fingerprint requirements and documentation necessary for the on-site director.
Individuals with non-exemptible, felony, or violent misdemeanor convictions must be immediately removed from a licensed facility. Individuals with non-exemptible convictions are not eligible for an exemption. Persons with felony or violent misdemeanor convictions may request an exemption, but must remain out of the facility pending an exemption decision. Individuals may also be excluded from a licensed facility if an exemption is denied or if a previously granted exemption is rescinded. The notification process and Confirmation of Removal form discussed below are applicable in all of these circumstances.

The Licensing Agency will contact the licensee by telephone and advise that the individual must be removed from the facility. If the cause for removal is a conviction that can be exempted, the individual and the licensee of the facility with which they are associated, are sent a letter informing them that an exemption must be obtained before the individual can return to the licensed facility. For all removals, the licensee is sent a Confirmation of Removal form by the Licensing Agency. The licensee must complete the Confirmation of Removal form and return the form to the appropriate Regional Office by the date indicated on the notice. The Confirmation of Removal form confirms in writing that the person ordered removed from the facility is, in fact, removed.

The above notification process is completed by the Caregiver Background Check Bureau, which processes criminal record information and requests for exemptions for all State licensed child care facilities. The Caregiver Background Check Bureau will send the Regional Office a copy of the notification letter which will include a copy of the Confirmation of Removal form for tracking and follow up purposes. Caregiver Background Check Bureau will attempt telephone contact the same day the letter is initiated (dated).
PROCEDURE

When a person has been ordered out of the facility, the Regional Office must have a tracking system in place to ensure that the Confirmation of Removal form is received at the Regional Office by the date indicated on the notice.

If the Confirmation of Removal form is received by the date indicated on the notice, the Regional Office will file the Confirmation of Removal form in the public section of the facility file; no site visit is required unless determined necessary (see C. below.)

If the Confirmation of Removal form is not received by the date indicated on the notice, the Licensing Program Analyst will telephone the licensee or designated person in charge of the facility within two (2) business days to verify that the person has been removed from the facility.

The following procedures are to be followed depending on the information received from the telephone call:

A. **If the licensee or designated person in charge of the facility states that the person has been removed but they failed to return the Confirmation of Removal form to the Regional Office, the Licensing Program Analyst will:**

   1. Inform the licensee or designee that a citation for failure to return the Confirmation of Removal form will be issued by mail, unless a site visit is made to issue the citation (see C. below). The citation will be issued on the LIC 809 Facility Evaluation Report.

   2. Require the licensee or designee, as a plan of correction, to fax or deliver the Confirmation of Removal form to the Regional Office by the close of the next business day.

The Confirmation of Removal forms are available to the public at the Department’s website at [www.cclca.gov](http://www.cclca.gov). Internet access is available at most public libraries. The Licensing Program Analyst will inform the licensee or designee of the correct Confirmation of Removal form to complete if the licensee indicates that they no longer have the form. (Note: if the licensee returns the wrong Confirmation of Removal form, it is acceptable as long as the identifying information on the form is completed for both the individual removed and the licensee.)

- LIC 300A Confirmation of Removal form - Exemption Needed
- LIC 300B Confirmation of Removal form - Exemption Denied
- LIC 300C Confirmation of Removal form - Exemption Rescinded
- LIC 300D Confirmation of Removal form - Non-Exemptible Conviction
- LIC 300E Confirmation of Removal form – Counties
3. Advise the licensee or designee that failure to fax or otherwise deliver to the Regional Office the Confirmation of Removal form by the plan of correction date (the close of the next business day) will result in the assessment of civil penalties of $50 per day until corrected.

4. Mail the LIC 809 (via regular mail) with the citation to the licensee and designee within one (1) business day of the plan of correction due date.

5. The Licensing Program Analyst will know by the time the LIC 809 is mailed whether the plan of correction has been completed. If the licensee complies with the plan of correction to return the form, the violation is cleared and no civil penalties shall be issued. If the plan of correction has not been completed, follow Evaluator Manual Section 1-0060 and Child Care Center Regulation Sections 101194 and 101195 for civil penalty procedures. (A visit must be made to assess civil penalties.)

The following is sample language to use for the citation:

Citation with Plan of Correction Completed and Deficiency Cleared

“The following violation of the California Code of Regulations, Title 22, Division 12, deficiency is hereby cited: Section 101170.1(b) Criminal Record Exemption. The licensee failed to return the Confirmation of Removal form to the Regional Office by the due date indicated on the form. This presents an immediate threat to the health and safety of children in care as the Confirmation of Removal form is written documentation that the individual ordered removed is, in fact, removed from the facility.

As a plan of correction, the licensee was instructed to fax and/or deliver the Confirmation of Removal form to this Regional Office by (date). Verification was received on (date) and the deficiency is cleared.

Please review this report, make any comments you wish, sign, make a copy for your records, and mail the original back to the Regional Office by (date) at: (note Regional Office and mailing address.)”

Citation with Plan of Correction Not Completed (Deficiency Not Cleared)

“The following violation of the California Code of Regulations, Title 22, Division 12, deficiency is hereby cited: Section 101170.1(b) Criminal Record Exemption. The licensee failed to return the Confirmation of Removal form to the Regional Office by the due date indicated on the form. This presents an immediate threat to the health and safety of children in care as the Confirmation of Removal form is written documentation that the individual ordered removed is, in fact, removed from the facility.

As a plan of correction, the licensee was instructed to fax and/or deliver the Confirmation of Removal form to Regional Office by (date). Verification has not been received and the deficiency is not cleared.
101170.1 CRIMINAL RECORD EXEMPTIONS (Continued)

Please review this report, make any comments you wish, sign, make a copy for your records, and mail the original back to the Regional Office by (date) at: (note Regional Office and mailing address.)

B. If the licensee or designee states that the individual has not been removed from the facility, the Licensing Program Analyst will:

1. Inform the licensee or designee that the individual must be removed from the facility that day and that failure to comply with the order to remove the individual is grounds for administrative action against the license.

2. Inform the licensee or designee that citations for failure to remove the individual and failure to return the Confirmation of Removal form will be issued by mail, unless a site visit is made to issue the citation (see C. below).

3. Follow steps A. 2. – 5. above. Add a citation for violation of Section 101170.1(a) for failure to remove the individual when ordered to by the Licensing Agency.

C. The Licensing Agency always reserves the right to make a visit to a facility to determine if an individual has been removed from the facility. If at any time the Licensing Program Analyst has reason to believe that the individual is still working or residing in the facility, the analyst must consult with the Local Unit Manager to determine if and when an on-site visit is necessary to investigate the situation. If it is determined that the individual is still working or residing in the facility during the visit, then the Licensing Program Analyst will:

1. Inform the licensee or designee that the individual must be removed from the facility that day, and failure to comply with the order to remove the individual is grounds for administrative action against the license.

2. Issue a citation for violation of Section 101170.1(a) for failure to remove the individual.

3. Consult with the Local Unit Manager to initiate the appropriate administrative action (revocation and/or temporary suspension order).
PROMISE

“Maintained” means that the fire clearance is to be kept in the child care center’s file.

The State Fire Marshal considers physical disability—not the age of children—when determining ambulatory capacity. That is because sleeping facilities (excluding napping areas) are not provided in child care centers.

However, access by means of a ramp or elevator must be provided for persons with physical disabilities pursuant to Table 33-A of the 1979 Uniform Building Code. There may be coordination between the fire department and the building department to inspect for Building Code requirements such as ramps, restroom facilities for persons with physical disabilities, etc. In addition, some areas are inspected by the local fire department and not the State Fire Marshal—and there may be different/additional requirements imposed by each inspecting agency.

Policy regarding bedridden children is as follows:

1. A bedridden person is “a person confined to a bed, requiring assistance in turning or unable to independently transfer to and from bed, and unable to leave a building unassisted during emergency conditions.” This does not apply to infants ages 0 to 2 years of age.

2. Bedridden children shall be allowed in child care centers as long as the center does not provide medical care to the child. No bedridden child shall be admitted to a child care center unless the center has secured a bedridden fire clearance. Licensees found caring for bedridden children shall be informed that the child cannot be cared for unless the center obtains the appropriate fire clearance. The licensee shall be instructed to immediately notify the child’s authorized representative concerning this requirement. If the licensee requests a bedridden clearance, the licensing analyst shall indicate on the Fire Safety Inspection Request form (STD 850) that a bedridden clearance is required.

PROCEDURE

If the fire clearance is denied for a deficiency that appears to be correctable, contact the applicant. If the applicant’s decision is to correct, record the Plan of Correction data on the Contact Sheet (LIC 185) and return the folder to the file. If the deficiency is not correctable, or the applicant determines the correction would be too costly, begin the denial or withdrawal process, as appropriate.

If a fire clearance denial is received on a licensed center, the Department shall initiate the appropriate administrative action. Under no circumstances shall a license be issued without an appropriate fire clearance (if required), and under no circumstances shall the requirement for a fire clearance be waived.
(a) **POLICY**

For licensing purposes, a fire clearance, once obtained, is valid throughout the life of a license and needs no renewal unless subsequently revoked by the State Fire Marshal.

When completing the STD 850 (fire safety inspection request form), count all children (including infants) as ambulatory/to age 18 in Item #11. Only children diagnosed with physical disabilities are to be shown as nonambulatory/to age 18 in Item #11.

Questions concerning requirements imposed on applicants/licensees by fire inspectors that appear to be non-fire safety standards should be forwarded to the State Fire Marshal Regional Office. There are three regional offices: Sacramento, San Leandro and West Covina.

See Section 101152n.(1) and Section 101161.

(b) **PROCEDURE**

See Section 101161(a) “Policy” for “mainstreaming” information.

See Sections 101152n.(1) and 101161.

For centers that tend to use supportive restraints, instruct the clerk to note this on the fire clearance request.

The request for a fire clearance should specify when deaf persons are being served in a center--even though deaf persons are considered ambulatory--to ensure that the center has an appropriate alarm system as required by statute.

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**101172 WATER SUPPLY CLEARANCE**

**POLICY**

Sanitation clearance inspections are requested only as required by this regulation, or if there are sanitation conditions that could adversely affect children’s health and safety (See Section 101238). For example, if a center is located in an area where chemical contamination is a concern, an analysis of the water may be requested.

**PROCEDURE**

Discuss the need for a sanitation inspection with your Local Unit Manager since the applicant/licensee would have to pay a fee to obtain a sanitation inspection. Coordinate inspections with the local sanitation department.
(c) Proposed changes to Plan of Operation that affect services to children

POLICY

A facility that cares for children who need incidental medical services shall identify those services in its Plan of Operation. A new applicant shall submit the information at the point of application. Currently licensed facilities shall submit the proposed change via a revised written Plan of Operation. The plan shall describe the facility’s policies and procedures that ensure the proper safeguards are in place.

Topics to be covered include but are not limited to:

- Types of incidental medical services to be provided.
- Records to be obtained and maintained, such as parental/authorized representative permission to provide the incidental medical service; written instructions from the child’s physician; verification of staff training; records of medication/service provided.
- Storage requirements, including equipment and supplies.
- Training requirements, including how to administer medication/service; use and maintenance of required equipment/supplies; what to do in emergencies; who will provide the training to staff or licensee.
- Staffing requirements, including number of trained staff that will be available when children needing specified incidental medical services are in care; plan for field trips away from facility to ensure services are not interrupted.
- Plan for ensuring proper safety precautions are in place, such as wearing gloves during any procedure that involves potential exposure to blood or body fluids; performing hand hygiene immediately after removal and disposal of gloves; disposal of used instruments in approved containers.
- Plan for transporting medication, equipment, and supplies with child(ren) to ensure incidental medical services are not interrupted when there is a disaster that requires relocation of children from the facility.
- Explain how parents/authorized representatives will be informed of each occurrence of incidental medical service to their child.
- Reporting requirements to Department of Social Services including serious incidents, as well as changes in Plan of Operation that affect children and timeframes for reporting to the Licensing Office.

(Please see also Regulation Interpretations and Procedures for Child Care Centers Section 101226.)
PROCEDURE

Revised Plan of Operation for Incidental Medical Services

If during a facility inspection, the facility is found to be providing incidental medical services that are not covered in its current Plan of Operation, require submission of a revised Plan of Operation that includes the provision of incidental medical services.

While conducting the inspection, check to ensure the facility meets the requirements for providing incidental medical services by reviewing the storage of medication and equipment/supplies, checking the records of the individual children being provided the service for required documentation, interviewing staff and checking staff records for written verification of training, and ensuring that at least one trained staff member is available to provide the service needed. If violations are found, cite the appropriate law or regulation. Please see Regulation Interpretations and Procedures for Child Care Centers Section 101226 for specific requirements.

Include the statement referred to below on the Field Evaluation Report (LIC 809).

Review of the Plan of Operation:

Upon receipt of any Plan of Operation that includes incidental medical services (including at the point of application), review the plan to ensure it meets requirements established in law and regulation. In addition to California Code of Regulations, Title 22, Section 101226, please see Regulation Interpretations and Procedures for Child Care Centers Section 101226 for specific requirements.

Document the review of the Plan of Operation on a Detail Supportive Information (LIC 812) form. For tracking purposes in the Field Automation System, name the document “IMS-PO” (which stands for Incidental Medical Services Plan of Operation). Save the form in the Field Automation System and file a hard copy in the facility file.

At the next facility inspection, check to ensure the facility is operating in accordance with its revised Plan of Operation. This inspection shall include, but not be limited to, reviewing the storage of medication and equipment/supplies, checking the records of the individual children being provided the service for required documentation, interviewing staff and checking staff records for written verification of training, and ensuring that at least one trained staff member is available to provide the service needed, when applicable.

Include the following statement in the narrative section of the Facility Evaluation Report (LIC 809): “This facility provides Incidental Medical Services – IMS. LPA reviewed storage of medication and equipment/supplies, and reviewed children’s, personnel, and administrative records.”
(d)(2)

POLICY

Disaster drills should ensure that children know exit routes. It is recommended that a diagram of the center clearly indicating exit routes be posted on all floors of the center.

During disaster drills, children should practice exiting the building according to plan--but relocating children would only occur in an actual disaster.
(b)(3) POLICY

A waiver may be granted when an applicant/licensee requests a variance to a specific regulation that relates to the overall operation of the center.

An exception may be granted when an applicant/licensee requests a variance to a specific regulation on behalf of an individual(s), e.g., a child or an employee.

An approval shall describe the alternate plan and specify the condition(s) under which the request is granted, including the duration of the waiver or exception. The duration of a waiver or an exception shall be for the term of the license, or for a shorter period at the request of the applicant/licensee, or as deemed necessary by the Department to ensure adequate and safe provision of service.

A denial shall fully explain the basis for denial.

PROCEDURE

See Reference Material Section 2-5000.

101179 CAPACITY DETERMINATION

(d) PROCEDURE

All decisions to reduce licensed capacity for existing licensees shall be approved by the Regional Office Manager and properly documented and supported in the center’s files.

Inform the licensee in writing of the reasons why a reduced capacity was determined necessary. For existing licensees, a reasonable time period shall be provided if relocation of children is necessary.

If an applicant or a licensee does not voluntarily reduce licensed capacity, deny the initial application or initiate revocation action.

(e)(2) POLICY

When restricted to specific children, the names of those children are confidential and shall not be printed on the license. The license shall state: “Restricted to specific children.”

PROCEDURE

Complete the Confidential Names form (LIC 811). Inform the licensee in writing of the reason(s) for the restriction, referring to the children by number, and enclose a copy of the LIC 811. Instruct the clerk to file the letter in the public section of the facility file and the LIC 811 in the confidential section.
101180 WITHDRAWAL OF APPLICATION

(a) POLICY

The applicant has the right to withdraw an application any time prior to the issuance of a license. The withdrawal of an application shall not be considered a denial. But the withdrawal of an application shall not deprive the Department of its authority to institute or continue a proceeding to deny an application unless the Department has consented to the withdrawal in writing. If the Department consents to a withdrawal, administrative action cannot be taken. Therefore, written consent should not be given in situations where application denial is intended or pending. Additionally, the withdrawal of an application is not appropriate in situations where the application has already been acted upon (denied or approved).

PROCEDURE

If the Department is notified that an applicant is no longer interested in obtaining a license and wishes to withdraw his/her application, confirm in writing the applicant’s intent to withdraw the application—and give consent to the withdrawal unless the Department is in the process of denying the application. If the Department is in the process of denying the application, continue the denial procedure and do not consent to the withdrawal of the application.

1. If a denial action is pending, send the following notification:

“We acknowledge receipt of your request to withdraw your child care center license application. This acknowledgment is not a consent to the withdrawal of your license application and does not deprive the Department of its authority to take action to deny your application.”

2. If denial action is not pending, send the following:

“We have received your request to withdraw your child care center license application and do hereby consent to the withdrawal. If you wish to obtain a child care center license in the future, you must reapply for a license.”

Document in the facility file the reason for consenting or not consenting to the withdrawal.

101181 PROVISIONAL LICENSE

(a) POLICY

Provisional licenses are not for the purpose of “expediting” the licensing process and are not to be used as “probationary licenses.” An applicant must comply with the criminal record and fire clearance requirements in order to meet the substantial compliance criteria. To the extent that waiting for these clearances “holds up” the licensing approval process, a provisional license cannot be used to remedy this situation.
**PROCEDURE**

When an application for a provisional license is approved, route it to the clerk with the Transmittal for Processing (LIC 907) for typing and logging. Prepare a cover letter that describes the conditions of the provisional license and the deficiencies to be corrected before a regular license can be granted. The cover letter should conclude with a statement that unless all conditions are fulfilled a regular license will not be granted. Review of the provisional license and cover letter by the Local Unit Manager is required before mailing.

If during the term of a provisional license, health and safety risks arise:

1. Issue a Notification of Initial Application Denial (LIC 192) and establish in that letter the date the center must cease operations (taking into consideration any relocation of children that may be necessary). (See Section 101205.)

2. If the center continues operation after the effective date in the LIC 192, issue a Notice of Operation in Violation of Law (LIC 195). (See Section 101157.)

Before the termination of a provisional license, the Department shall (1) conduct a review to determine whether all licensing requirements are met and (2) deny or approve the application for a license.

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**101182 ISSUANCE/TERM OF A LICENSE**

(a)

**POLICY**

A child care center’s failure to comply with a local ordinance or deed restriction shall not constitute grounds for denial of an application or revocation of a license unless the reasons for noncompliance are also violations of licensing laws and regulations.

**PROCEDURE**

1. If a city, county, landlord, etc., notifies the Department that an applicant/licensee is failing to meet the terms of a local ordinance or deed restriction, advise such person(s) that if the center meets the requirements of the Child Day Care Act and Title 22 of the California Code of Regulations, the applicant/licensee will be issued a license to operate a child care center. Such person(s) should be further advised that any administrative/legal action or recourse as it pertains to nonconformance with local ordinances or deed restrictions would have to be initiated and carried out by the city, county, landlord, etc., in question.

2. If such noncompliance is determined to be in violation of licensing laws and regulations, advise the applicant/licensee of the violation and take appropriate legal/administrative action, e.g., denial, issuance of civil penalties, etc. (See Sections 101205 through 101206.)
3. If it is discovered that a city, county, landlord, etc., has adopted/imposed a local ordinance or deed restriction that is in violation of state law, the Department shall not initiate or take legal/administrative action against the city, county, landlord, etc., on an applicant's/licensee’s behalf. In such cases, the applicant/licensee shall be advised that if they meet all of the provisions of Title 22 and conform with state laws, they will receive a license.

(b) PROCEDURE

Determine, as the result of a site visit, that the center and the licensee meet licensing requirements. Review the entire folder and make a final decision on the application. Forward the folder to the clerk with a Transmittal for Processing (LIC 907) recommending licensure and detailing limitations and the applicant’s preferences.

101186 CONDITIONS FOR FORFEITURE OF A CHILD CARE CENTER LICENSE

POLICY

Health and Safety Code Section 1596.858 clarifies that a license is forfeited by law prior to the expiration date under the following circumstances:

1. The licensee sells or transfers the child care center or center property (unless the property sale/transfer does not result in a change in licensee).

2. The licensee surrenders the license to the Department.

3. The licensee moves the center from one location to another. Licensees do not have to complete the entire application process when applying for a license for the new location.

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

5. The licensee dies.

6. The licensee abandons the center.
PROCEDURE

The procedure stated below applies to Health and Safety Code Section 1596.858.

When any one of the above six circumstances occur, complete the following steps:

1. If you were informed of the forfeiture by a phone call from the licensee, document the specifics of the phone conversation on a Contact Sheet (LIC 185). Inform the licensee that a letter will be sent to him/her acknowledging the forfeiture and asking the licensee to mail in the original license.

2. If you were informed of the forfeiture by a letter from the licensee, contact the licensee by telephone, if possible, and inform the licensee that a letter will be sent to him/her acknowledging the forfeiture and asking the licensee to mail in the original license. Document date of receipt of the letter and the telephone conversation on an LIC 185.

3. If you became aware of the forfeiture during a facility visit, document the information on a Facility Evaluation Report (LIC 809) and ask the licensee for the original facility license. Inform the licensee (and note that you have done so on the LIC 809) that a letter will be sent to him/her acknowledging the forfeiture of the license. If you made a site visit, and a child care center appeared to be closed or abandoned, please note that closure of a center does not mean that the licensee has forfeited the facility license. Contact the licensee by telephone or letter and ask the licensee if the center is closed and if the licensee wishes to forfeit the facility license. Inform the licensee that if he/she does wish to forfeit the license, a letter will be sent to him/her acknowledging the forfeiture and asking the licensee to mail in the original license.

4. If you were informed of the forfeiture by a source other than the licensee, or if there are any questions about the closure, contact the licensee by telephone or letter and ask the licensee if he/she wishes to forfeit the facility license. Inform the licensee that if he/she does wish to forfeit the license, a letter will be sent to him/her acknowledging the forfeiture and asking the licensee to mail in the original license.

5. Send the following notification by certified mail to the licensee at the last known address. Include a stamped, self-addressed envelope if the licensee has not previously turned over the original facility license.

“Your license is forfeited by operation of law pursuant to Health and Safety Code Section 1596.858 effective ______.* Your license is no longer valid and all provision of care and supervision must cease. If you have not already done so, please send your license to the above address. If you wish to again operate a child care center, you must reapply and be approved for a new license.”

(*The effective date should be the date of notification unless a later closure date has been agreed upon.)
PROCEDURE (Continued)

If an administrative action is pending or planned, Regional Offices are to notify the Office of the Chief Counsel, and counties are to notify their county liaison, of any activity regarding the license—and then continue the administrative action process.

NOTE: When a forfeiture is the result of a surrender of a license, do not use the term “surrender”—use the above language.

POLICY

(Health and Safety Code Section 1596.803)

Health and Safety Code Section 1596.803 states in part that failure to pay the required license fees, including the finding of insufficient funds to cover bona fide business or personal checks submitted for this purpose, shall constitute grounds for denial of a license or forfeiture of a license.

The object of citing a licensee as “unlicensed” without an actual facility visit when the licensee admits to continuing operation is to save both time and effort on the part of local licensing staff.

PROCEDURE

Refer to Reference Section 3-1600, Review of Annual License Fee Notice (LIC 201F).

The PROCEDURE stated below applies to Health and Safety Code Section 1596.803.

When the facility file contains no proof of payment or information stating the licensee has ceased operation and surrendered his/her license, licensing staff shall attempt to contact the licensee to find out if the licensee plans to continue operating.

If the licensee is believed to be operating, licensing staff are to contact the licensee by phone and advise them that the fee must be paid immediately. Licensees are to be advised that failure to pay the annual fee will result in the forfeiture of their license and may make them subject to civil penalties.

If the licensee claims to have previously paid the fee or to have ceased operation, send a Final Notice Non-Payment of Fees letter (sample below) to both the facility address and the licensee’s address (if they are different) by regular mail service as a follow-up to the phone conversation.

If the licensee refuses to pay the annual licensing fee, send the Final Notice Non-Payment of Fees letter to them by regular mail service. Licensing staff may wish to explain to the licensee that the Final Notice letter will be mailed to them.

If the Department receives proof of previous payment or full payment of the annual fee prior to the licensee’s anniversary date, no further action is necessary.
PROCEDURE (Continued)

If there is no response to the Final Notice Non-Payment of Fees within the required time, then within one week send the Notice of Forfeiture (sample below) to both the facility address and the licensee’s address (if they are different) by regular mail service.

If the licensee has requested a meeting in response to the Final Notice letter, the evaluator who issued the Final Notice and a higher-level staff person shall arrange to meet with the licensee or his/her representative. If it is determined that the licensing fee is not due or has been paid (for example, a credit is due because of a previous overpayment), then no further action is needed.

If it is determined that the licensing fee is due and the licensee refuses to pay it, then the Notice of Forfeiture, as shown below, shall be given to the licensee or his/her representative at the time of the meeting provided it is after the licensee’s anniversary date.

If the annual licensing fee remains unpaid on the 16th calendar day from the effective date on the Notice of Forfeiture, the licensee is to be assessed civil penalties. Licensing staff are to refer to Title 22, Section 101157, Operation Without a License, and Section 101198, Unlicensed Facility Penalties, for further instructions. A site visit is not necessary to assess civil penalties. The Notice of Forfeiture will be used in lieu of the Notice of Operation in Violation of Law until regulations are in place.

Following is a sample Final Notice Non-Payment of Fees letter:

“You were previously notified that your annual license fee is due. Our records indicate that your fee of $_______ has not been received in this office. If you believe you have paid this fee and that our records are in error, please provide us with a copy of your cancelled check or other evidence of payment within 2 weeks of the date of this letter.

“If you feel this fee is not due, or if there is any other reason for your failure to pay the fee, you should contact your local licensing office and schedule a meeting to discuss these issues. A date and time will be arranged for you to present your information. You have 2 weeks from the date of this letter to contact your local licensing office and request a meeting.

“Please be advised that payment of an annual licensing fee is required under Health and Safety Code Section 1596.803. Failure to pay the annual fee is grounds for forfeiture of your license. If you have not yet paid this fee, either the full payment or your request for a meeting must be received in our licensing office within 2 weeks from the date of this letter.

“If you do not wish to continue operating a licensed facility, please check the box below and return this notice along with your license to us within the above 2-week period.

☐ “I do not wish to continue operation of my child care facility. I am surrendering my license and am not providing any care and supervision as authorized by this license. I am also aware that to provide care and supervision without a license makes me subject to civil penalties and/or criminal prosecution.
“If you choose to surrender your license or your license is forfeited, we will notify the appropriate child care resource agencies and remove the name of your child care facility from our list of licensed facilities.”

**Following is a sample Notice of Forfeiture letter:**

“Because you have failed to pay your annual fee, your license to operate a child care facility is forfeited by operation of law pursuant to Health and Safety Code Section 1596.803 effective *___________. As of this date your license is no longer valid.

“You have 15 calendar days from the date of this notice to make full payment of your annual licensing fee or to submit a new application for licensure, including the required application fee, to your local licensing office.

“If you continue to operate a child care facility, you are in violation of Health and Safety Code Section 1596.80 and you are subject to a civil penalty assessment of $200.00 per day, effective on the 16th calendar day from the date of this notice, unless full payment of your annual licensing fee reaches us within the required time.”

(*The effective date should be the date of notification unless a later closure date has been agreed upon.)

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**101187 APPLICATION/ANNUAL FEES**

The following procedures are pursuant to Health & Safety Code Section 1596.803.

This process is intended to give an overview of the entire fee collection process. The Regional Office is responsible for the Regional Office Procedures only.

**MAILING OF LICENSING INFORMATION SYSTEM GENERATED ANNUAL LICENSE FEE NOTICE**

The Annual License Fee Notice is automatically generated by the Licensing Information System the first Wednesday of every month and centrally mailed out from the California Department of Social Services mailroom to the licensee’s address four months prior to the facility’s anniversary date. For aggregate facility types, only the primary facility will receive this notice.

*If a licensee pays the annual fee after the facility’s anniversary date, Regional Office staff must inform the licensee to submit a new license application and new application fee to become re-licensed. Any exceptions to this must be approved by the Regional Manager.*
A licensee who fails to pay the full annual fee by the facility’s anniversary date subjects the license to forfeiture. In the event the licensee continues to operate after the license is forfeited, the licensee is operating an unlicensed facility and is subject to unlicensed facility penalties pursuant to Health and Safety Code 1596.891(a). The Regional Office staff are to follow the regulation section for Unlicensed Facility Penalties and Evaluator Manual Section 1-0640.

If a licensee is involved in the sale and transfer of the property and business, the annual fee does not have to be paid provided the parties involved in the transfer fully comply with the requirements of Health and Safety Code 1597.14(e) and the new application fee has been paid. This is the only circumstance that relieves the licensee from paying the statutorily mandated annual fee when due.

Notice advises licensee to:

- Send the fee payment in the form of a check or money order to the Central Office Cashiering, MS 14-67, P.O. Box 944243, Sacramento, CA  94244-2430, due 30 days prior to the facility anniversary date; or

- Indicate on the No Longer in Business Notification located on the reverse side of the fee notice if the facility is no longer in operation as a child care center facility and return it to the Regional Office.

Regional Office Information

- If the Regional Office receives an annual payment, the check must be endorsed and transferred with supporting documentation to the Central Office Cashiering on a daily basis;

- No action is necessary if at any time prior to the facility’s anniversary date full payment of the annual license fee is received and entered by the Central Office Cashiering into the Licensing Information System.

Central Office Cashiering Information

- Central Office Cashiering will input fee payment into the Licensing Information System Cashiering screen within 48 hours of receipt;

- Central Office Cashiering will verify that transmittal document concurs with enclosed checks;

- Facility information changes made on the Annual License Fee Notice and Aggregate Annual License Fee Notice are forwarded to the Central Operations Branch by the Central Office Cashiering. The Central Operations Branch sends the copies on to the Regional Office for the Licensing Information System to be updated.
NOTE: The LIC 201F will no longer be used. The Annual License Fee Notice is now a back-to-back one-page letter generated by the Licensing Information System.

Non-Aggregate Facilities

Should a licensee return the Annual License Fee Notice to the Regional Office with the signed No Longer in Business Notification indicating the facility is no longer in operation, Regional Office staff will enter this information into the Licensing Information System Facility Closure screen using Closure Code 3, “Closed-Licensee-Initiated,” and file the notice in the facility file. (Refer to Section 3-1600 for surrender acknowledgement instructions and follow office procedure). Note: Analyst must be informed of the closure. No additional automated notices will be produced.

Any Annual License Fee Notices, Final Notices or Forfeiture Notices that are returned to the Regional Office that are signed and indicate a Reason for Closure on the No Longer in Business Notification, Regional Office staff must forward a copy of the Reason for Closure to the Technical Assistance Bureau at MS 19-56.

PROCEDURE

For the California Department of Social Services Mailroom

- On the first Thursday of every month, the California Department of Social Services mailroom personnel pick up the Annual License Fee Notice from the Health and Welfare Data Center for mailing to the licensee’s address by the following day.

Aggregate Facilities

Facilities that are participating in the Aggregate Rate Fee Program can be identified as an aggregate rate facility by the “Secondary” or “Primary” facility indicators located underneath the “Facility Type” field on the Licensing Information System Payment History Report screen. For secondary facilities, the number that is shown to the right of the facility type is the facility number of the aggregate primary.

When a primary facility returns the Aggregate Annual License Fee Notice with the No Longer In Business Notification signed and indicating the facility is no longer in operation, Regional Office staff must contact the Aggregate Program Coordinator in the Central Operations Branch to have the access code changed in the Licensing Information System to a secondary facility type. The Central Operations Branch aggregate personnel will then notify the Regional Office staff the facility is ready for closing in the Licensing Information System. Note: Analyst must be informed of closure. (Refer to Section 3-1600 for surrender acknowledgement instructions and follow office procedure for closing facility file.) No additional automated notices will be produced.
For the California Department of Social Services Mailroom

- On the first Thursday of every month, the California Department of Social Services mailroom personnel pick-up the Aggregate Annual License Fee Notice from Health and Welfare Data Center for mailing to the licensee of the primary facility by the following day.

MAILING OF THE LICENSING INFORMATION SYSTEMS GENERATED FINAL NOTICE OF ANNUAL LICENSE FEE-UNDERPAYMENT

For Non-Aggregate Facilities

If the full annual fee payment has not been entered into the Licensing Information System by the Central Office Cashiering by approximately the 22nd day preceding the facility’s anniversary date, (this can be viewed on the Payment History/Aggregate Menu screen by the Regional Office staff) or the licensee-initiated closure code has not been entered, the Licensing Information System will generate a Final Notice of Annual License Fee For Annual Fee and a No Longer in Business Notification. The Regional Office will receive copies of the notices every Friday for filing in the facility file, as well as a Listing of Facilities Issued a Final Notice for Annual Fee. This listing identifies facilities requiring a follow-up courtesy call by the Regional Office.

For Aggregate Facilities

If the full annual fee payment has not been entered into the Licensing Information System by approximately the 22nd day preceding the primary facility’s anniversary date, (this can be viewed on the Payment History Aggregate Menu screen by the Regional Office staff) the Licensing Information System will generate a Final Notice of Annual License Fee-Underpayment and a No Longer in Business Notification. The Regional Office will receive copies of the notices for filing in the primary and secondary facility files as well as a List of Facilities Issued a Final Notice for Annual Fee. This listing identifies facilities requiring a follow-up courtesy call by the Regional Office.

Notice advises licensee that:

- Full payment of the annual fee has not been received and the fee is required to remain licensed pursuant to Health & Safety Code 1596.803;

- If payment has already been made the licensee must provide evidence to the local Regional Office listed on the reverse side of the notice;
PROCEDURE (Continued)

- If the facility is no longer in operation, the licensee is to sign in the area indicated on the *No Longer in Business Notification* located on the reverse side of the letter stating they are no longer providing care and supervision to clients and return it with their original license(s) to the listed Regional Office. Please Note: The *No Longer in Business Notification* can only be signed by the primary facility licensee for purposes of closing the primary or a secondary aggregate facility. Signatures from secondary facility licensees cannot be accepted.

- If full payment is not received by the facility’s anniversary date, their license(s) will be forfeited, pursuant to Health & Safety Code 1596.803(d) for failure to pay; In the event of forfeiture, the Department will notify appropriate referral agencies and notify Food Grant Programs and Alternative Payment Programs of the facility closure. (The Central Operations Branch generates a monthly listing to the Department of Education of this closure information.)

**The licensee is instructed to:**

- Mail the payment prior to the facility’s anniversary date in the form of a money order or cashier’s check only; or

- Submit proof of payment to their local Regional Office, (for aggregate facilities, to the primary facility’s Regional Office), if the licensee has already paid the current annual fee; or

- If the facility is no longer in operation, to sign and return the *No Longer in Business Notification* found on the reverse side of the notice with the original license to the listed Regional Office by the facility’s anniversary date, for aggregate facilities, this would be the primary aggregate facility’s anniversary date. (This procedure is to inform Regional Office staff of the operational status of a facility only. This notice is not used for a facility relocation or change in ownership).

**PROCEDURE**

**For the Regional Office**

*(These procedures apply to both non-aggregate facilities as well as aggregate facilities).*

- A *List of Facilities Issued a Final Notice For Annual License Fee* is printed every Friday at the Regional Office;
For the Regional Office (Continued)

- The Regional Manager or his/her delegate calls the licensees on the List of Facilities Issued a Final Notice For Annual License Fee. The phone calls shall be made within seven (7) calendar days following the date the report prints to find out the status of the fee payment and facility operation;

- If the licensee states the facility is still in operation, the licensee must be informed that in order to retain their license, they must pay the full annual fee by close of business of their anniversary date or their license(s) will be forfeited by operation of law;

- If the licensee states that the facility is no longer in operation, the Regional Office must ask the licensee if they wish to surrender their license. If the licensee chooses to surrender the license, direct them to sign and return the No Longer in Business Notification acknowledging the surrender with their original license to the listed Regional Office. Upon receipt of the signed No Longer in Business Notification or other written notification, the license will be forfeited pursuant to Health & Safety Code 1596.858(b). Regional Office staff are to input Closure Code 3 “Closed-Licensee-Initiated” into the Licensing Information System. (Refer to 3-1600 for surrender acknowledgement instructions and follow office procedure for closing file). **NOTE:** Analyst must be informed of closure. No additional automated notices will be produced. If a written statement or the signed No Longer in Business Notification is not received by the facility anniversary date, the license is forfeited pursuant to Health & Safety Code 1596.803(d). The facility must be closed on the Licensing Information System under Closure Code 7, “Closed-non-payment.” (Please refer to Closing A Facility Due To Nonpayment-For Regional Office procedures.)

- The Regional Office must document all related telephone conversations on a Contact Sheet (LIC 185) to be placed in the facility file;

- If the Regional Office receives proof of payment from the licensee, the Regional Office must place a copy into the facility file and forward the original documentation to the Accounting Unit, MS 13-72 for entering into the Licensing Information System. The Accounting Unit will reconcile the proof of payment with the Licensing Information System by posting payment information into the Payment History Report screen. No additional automated notices will be produced.
For the California Department of Social Services Mailroom

- The California Department of Social Services mailroom sends these notices to the licensee’s address and, if different, to the facility’s address. For aggregate facilities, the notice is mailed to the primary licensee’s address, and if different, to the primary facility address. Secondary facilities receive a copy as well.

MAILING OF LICENSING INFORMATION SYSTEMS GENERATED NOTICE OF FORFEITURE

This list is informational only

For Non-Aggregate Facilities

If the full annual license fee payment has not been entered into the Licensing Information System by the Central Office Cashiering by approximately the 8th day preceding the facility’s anniversary date, (this can also be viewed on the Payment History/Aggregate Menu screen by the Regional Office staff) or the licensee-initiated closure code has not been entered into the Licensing Information System, the Licensing Information System will generate a Notice of Forfeiture and a second No Longer in Business Notification. The Regional Office will receive copies of the notices for filing into the facility file, as well as, a List of Open Facilities issued a Notice of Forfeiture/Revocation Letter. This listing is also printed at the Child Care Program Office for information only.

For Aggregate Facilities

If the full annual license fee payment has not been entered into the Licensing Information System by the cashiering office by approximately the 8th day preceding the primary facility’s anniversary date, (this also can be viewed on the Payment History/Aggregate Menu screen by the Regional Office staff), or the licensee-initiated closure code has not been entered into the Licensing Information System, the Licensing Information System will generate a Notice of Forfeiture and a second No Longer in Business Notification. The Regional Office will receive copies of the notices for filing into the facility file, as well as, a Listing of Open Facilities Issued a Notice of Forfeiture/Revocation Letter. This listing is also printed at the Child Care Program Office for information only.
Notice advises licensee that:

- Their license(s), includes primary and secondary facilities, to operate a child day care facility will be forfeited pursuant to Health & Safety Code Section 1596.803(d), on the facility anniversary date due to nonpayment of the annual license fee;

- If the license(s) is/are forfeited, the licensee will be required to resubmit a new licensing application and fee to become re-licensed;

- If the licensee continues to operate with a forfeited license, they will be in violation of Health & Safety Code Section 1596.80 and will be subject to penalty assessment for operating without a valid license pursuant to Health & Safety Code Section 1596.891(a);

The licensee is instructed to:

- Mail the payment prior to the facility’s anniversary date in the form of a money order or cashier’s check only; or

- Send in the No Longer in Business Notification with the original license(s) to the listed Regional Office.

PROCEDURE

For the Regional Office

(These procedures apply to both non-aggregate facilities as well as aggregate facilities)

- A List of Facilities Issued a Notice of Forfeiture/Revocation Letter For Annual Fee is printed every Friday at both the Child Care Program Offices and Regional Offices;

- If the Regional Office receives the No Longer in Business Notification by the facility’s anniversary date, the Regional Office must input Closure Code 3, into the Facility Menu of the Licensing Information System, “Closed-Licensee Initiated.” (Refer to Section 3-1600 for surrender acknowledgement instructions and follow office procedure for closing file.) NOTE: Analyst must be informed of closure.
PROCEDURE

For the California Department of Social Services Mailroom

- The California Department of Social Services mailroom sends these notices to the licensee’s address and, if different, to the facility’s address. For aggregate facilities, the notice is mailed to the primary licensee’s address, and if different, to the primary facility address. Secondary facilities receive a copy as well.

CLOSING OF A FACILITY DUE TO NONPAYMENT-FOR REGIONAL OFFICES

A Statement of Facts is not necessary to process a closure of a due to nonpayment of the annual fee. A Statement of Facts is only necessary to process the closure of Residential Care Facilities for the Chronically Ill for nonpayment of the annual fee.

For Non-Aggregate Facilities

If the full annual fee has not been entered into the Payment History/Aggregate Menu screen of the Licensing Information System or the licensee-initiated closure code into the Facility Closure screen by approximately the eleventh day following a facility’s anniversary date, the facility will appear on the Listing of Facilities To Be Closed For Non-Payment of Annual Fee. This listing informs the Regional Office of the facilities that are currently open on the Licensing Information System that need to be closed due to forfeiture of their license from nonpayment of their annual license fee. This listing prints each Monday evening at the Regional Office and every month on the second Monday at the Child Care Program Office.

For Aggregate Facilities

The primary aggregate facility’s failure to pay the annual fee will result in all licenses within the aggregate group being forfeited. If the primary facility is no longer operating, the aggregate payment can be made by any of the secondary facilities in order to avoid forfeiture of their licenses. Should this be the case the Community Care Licensing Division Aggregate Program Coordinator in the Central Operations Branch should be notified so that a secondary facility can be converted to the primary facility status.
This listing informs the Regional Office of the aggregate facilities that are open on the Licensing Information System that need to be closed due to forfeiture of their license. Facilities will appear on the Listing of Facilities To Be Closed Due To Nonpayment if the full annual fee has not been entered into the Payment History/Aggregate Menu screen or the licensee-initiated closure code into the Facility Closure screen. These facilities will appear on the list approximately 11 days following the primary facility’s anniversary date. The primary facility and all of the associated secondary facilities will appear on the closure list. This listing prints each Monday evening at the Regional Office and every second Monday of each month at the Regional Offices.

PROCEDURE

For the Regional Office

(These procedures apply to non-aggregate facilities only)

REGIONAL OFFICE STAFF MUST RESEARCH EACH FACILITY TO VERIFY THE ACCURACY OF THE FACILITY’S NON-PAYMENT STATUS, PRIOR TO CLOSING THEM IN THE LICENSING INFORMATION DATABASE.

If a licensee pays the annual fee after the facility’s anniversary date, Regional Office staff must inform the licensee to submit a new license application and new application fee to become re-licensed. Any exceptions to this must be approved by the Regional Office Manager.

- Regional Office staff must close the facilities in the Licensing Information System under Option #7, “Closed-Non-Payment.” This closure option is under Option #9, Application/Facility Closure which is under Option #5, Facility Menu;

- Follow through with Regional Office policy for closing facilities;

- Facilities must be closed within ten calendar days from the date the report prints.

Visits are discretionary for verifying if facility operation has ceased.
PROCEDURE

For the Regional Office

(This procedures apply to aggregate facilities only)

REGIONAL OFFICE STAFF MUST RESEARCH EACH FACILITY TO VERIFY THE ACCURACY OF THE FACILITY’S NON-PAYMENT STATUS, PRIOR TO CLOSING THEM IN THE LICENSING INFORMATION SYSTEM DATABASE.

- Regional Office staff must close the secondary aggregate facilities listed under Closure Code 7, “Closed-Non-Payment” of the Facility Closure Screen of the Licensing Information System. Regional Office staff must close the facilities listed in the Licensing Information System under Option #7, “Closed-Non-Payment.” This closure option is under Option #9, Application/Facility Closure under Option #5 of the Facility Menu;

- To close primary aggregate facilities, Regional Office staff must notify the Central Operations Branch aggregate coordinator. The aggregate coordinator must change the primary facility to a secondary facility in the Licensing Information System. Upon completion, the aggregate coordinator contacts the Regional Office to close the facility. Regional Office staff are to follow closure procedures for secondary facilities stated above;

- Follow through with Regional Office policy for closing facilities;

- Facilities must be closed within ten calendar days from the date the report prints.

Visits are discretionary for verifying if facility operation has ceased.

CLOSING A FACILITY DUE TO NONPAYMENT-FOR THE CHILD CARE PROGRAM OFFICE

This list is informational only

The Listing of Facilities To Be Closed Due For Nonpayment of Annual Fee prints on every month on the second Monday at the Child Care Program Offices. This list captures facilities remaining open on the Licensing Information System from 11 to 30 days past their facility’s anniversary date and in increments of 30 days thereafter. The Child Care Program Office report and Regional Office report are the same report and can be referenced by the report run date. Due to the report only reflecting facilities from the current billing cycle, facilities that remain open on the Licensing Information System without a fee payment can remain on the report for up to eight months past their facility’s anniversary date before dropping off.
MAILING OF LICENSING INFORMATION SYSTEM PRODUCED DISHONORED CHECK NOTICE

If the check processed for the annual fee is dishonored due to insufficient funds, stale date or closed account, the Accounting Unit will enter returned check information into the Payment History Report screen of the Licensing Information System. This will immediately generate a Dishonored Check Notice to the licensee. The Accounting Unit is responsible for mailing the notice certified mail to the licensee. A facility file copy is printed at the Regional Office. If the check is returned by the bank due to insufficient funds, stale date or closed account, the Regional Office will receive a copy of the Dishonored Check Notice.

If the check is returned due to stop payment, the Regional Office will receive a copy of the Dishonored Check Notice and a faxed copy of the stop payment check from the Accounting Unit. See Regional Office procedures below for further instructions.

The Dishonored Check Notice advises the licensee that:

- The check for payment of the annual license fee was returned by the bank because of insufficient funds;

- The licensee has 30 days to submit payment in the Total Due amount listed on the letter unless evidence is provided an error was made by their financial institution;

- The license will be subject to forfeiture if payment has not been submitted to the Accounting Unit or appropriate documentation by the facility’s anniversary date;

- If the check was dishonored due to stop payment, the licensee must provide the Department with a Good Faith Dispute in the manner provided in Civil Code 1719 within 30 days from the date of the letter;

- Continued operation after the facility’s anniversary date without a license will result in the assessment of unlicensed facility penalties pursuant to Health & Safety Code Section 1596.891(a).

The licensee is instructed to:

- Mail payment in the form of a cashier’s check or money order only. A personal or business check will no longer be accepted per Health & Safety Code 1596.803(c); or

- If the licensee wants to dispute this claim, they must submit documentation to the Accounting Unit from their financial institution to support their claim otherwise payment for the Total Due amount is necessary;
• If the check was dishonored due to a stop payment, and if the license is asserting a Good Faith Dispute pursuant to Civil Code 1719, they must provide the Accounting Unit with a written statement of reasons for the stop payment; or

• If payment has already been resubmitted, return the *Dishonored Check Notice* with the check number and date of remittance to the Accounting Unit.

**Regional Office Procedures:**

• **If the Regional Office receives a copy of the *Dishonored Check Notice* only,** Regional Office staff are to file the notice into the facility file. No additional action will be necessary provided the annual fee payment is paid prior to the due date.

• If the Regional Office receives a copy of the *Dishonored Check Notice* along with a copy of the check indicating a stop payment:
  
  • Regional Office staff must investigate the reason for the stop payment by contacting the licensee within 30 days from the date of the notice.

• If the Regional Office is notified verbally or in writing by the licensee that they are asserting a Good Faith Dispute, and as a result a stop payment has been placed on the annual fee check, they must adhere to the following procedures to preserve the Department’s rights under Civil Code 1719 to collect the annual fee:
  
  • Regional Office staff must ask the licensee what the Good Faith Dispute is about i.e. a statement of reasons for the stop payment;

  • Regional Office staff must contact the consulting attorney assigned to their Regional Office regarding the Good Faith Dispute claim. The consulting attorney will recommend the appropriate course of action, i.e., to either go forward with forfeiture/revocation or keep the case on hold to try to work out the dispute, etc.;

  • Regional Office staff must document all communication on a contact sheet (Form LIC 185) and keep in the public section of the facility file;

• If the Regional Office receives the *List of Facilities Issued a Final Notice For Annual Fee* and it includes the facility issued a *Dishonored Check Notice*:
Regional Office staff must check the list or the Licensing Information System for facility billing status and follow procedures listed under *Mailing of the Licensing Information System Generated Final Notice of Annual License Fee-Underpayment*;

If the Regional Office receives the *List of Facilities Issued A Forfeiture/Revocation Letter For Annual Fee* and it includes the facility issued the *Dishonored Check Notice*:

Regional Office staff must check the list or the Licensing Information System for facility billing status and follow procedures listed under *Mailing of the Licensing Information System Generated Notice of Forfeiture*;

If the Regional Office receives the *Listing of Facilities To Be Closed for Nonpayment of Annual Fee* and it includes the facility issued the *Dishonored Check Notice*:

Regional Office staff must check the list or the Licensing Information System for facility billing status and follow procedures listed under *Closing A Facility Due To Nonpayment-For Regional Offices*. 
ARTICLE 4  ENFORCEMENT PROVISIONS

101193  DEFICIENCIES IN COMPLIANCE  101193

(a)  

POLICY

Deficiencies are non-compliances with either licensing laws or regulations. A Type A deficiency, as defined in Title 22, Section 101152 (s)(3), is “a deficiency that presents an immediate or substantial threat to the physical health, mental health, or safety of the children of a child care center.” Section 101193 lists examples of key regulations that may result in a Type A deficiency citation. This list is not conclusive, and lack of compliance with any of the regulations does not automatically trigger a Type A citation. But noncompliance with any of the regulations listed will generally indicate the existence of a threat to the health and safety of the children commensurate to a Type A and should be so cited.

Further, lack of compliance with Section 101170, relating to criminal record clearance, and with Section 101171, relating to fire clearance, will always be cited as a Type A deficiency. These are 2 requirements that are essential to ensure the provision of adequate and safe care to children.

PROCEDURE

When you identify a deficiency, you must write the deficiency on the Facility Evaluation Report (LIC 809). If a deficiency that has not previously been cited is corrected during the visit, you may use your discretion in determining whether it should be documented on the LIC 809. Very minor infractions, such as dusty nightstands or a burned-out light bulb, should be handled verbally by telling the licensee to correct the infraction. However, all other deficiencies shall be included on the LIC 809 with an indication of whether or not correction was made at the time of the visit. (See also Reference Material Sections 3-3100 through 3-3700 and 3-4000 through 3-4500.)

(b)  

PROCEDURE

During the exit interview, discuss the following:

1. Deficiencies observed and cited on the LIC 809.

2. The plan for correcting any deficiencies, including due dates, and, if necessary, interim steps for completing each part of the plan. (See also Evaluator Manual Reference Material Section 3-3600.)

3. The civil penalties process and the licensee’s appeal rights. (See Sections 101193 through 101195 and Reference Material Section 1-0040 through 1-0070.)

If a child care center has deficiencies that could pose an immediate threat to children’s health and safety (e.g., a broken, jagged window is observed in a center or in an area frequently used by children), remain on the premises until any dangerous conditions can be remedied.
101193 DEFICIENCIES IN COMPLIANCE (Continued)

(b) PROCEDURE (Continued)

The Facility Evaluation Report (LIC 809) is used for documenting site visits, civil penalties and office visits. The LIC 809 is signed by the evaluator and the licensee/administrator (or designee). The original of the completed LIC 809 is kept by the Regional Office and a copy is given to the child care center.

Refer to Section 101200 for mandatory notification of child care resource and referral agencies and/or the California Department of Education.

(c) PROCEDURE

It is expected that the writing of the LIC 809 will be completed in the field at the conclusion of the evaluation visit. There are exceptions to this general practice. For example, an evaluator may be conducting a lengthy and complex inspection that extends beyond normal working hours. Or, because of uncertainty about whether a violation should be cited as a Type A or Type B deficiency, an evaluator may need to discuss the situation with his/her Local Unit Manager.

If an evaluator is unable to complete the LIC 809 by the end of the visit, he/she must leave at the center an LIC 809 signed by the licensee/administrator (or person in charge) that states the date and purpose of the visit and clearly documents that:

1. Deficiencies were discussed during the exit interview.
2. An appointment is to be scheduled, either in the center or at the Regional Office, to review the LIC 809 and determine plans of correction. An attempt should be made to schedule the appointment not more than 2 working days past the date of the evaluation visit.

(d) POLICY

The most appropriate regulatory section from Title 22, or the most appropriate statutory section from the Health and Safety Code, shall be cited on the LIC 809.

PROCEDURE

Complete the top section on the first page of the LIC 809. This includes the time entering and exiting the center, and the address and telephone number of the appropriate licensing office. The additional pages should show the facility name and page reference.
Clearly number and separate each deficiency. This allows for clear reference to the violation when issuing citations or securing plans of correction. After numbering the deficiency and giving the reference, briefly paraphrase, quote or explain the section that is being violated. If the code section can be easily quoted, state directly what the regulation requires. If the regulation is not easily quoted, paraphrase--using caution that your explanation does not alter the intent of the regulation.

Following the number code section and the explanation of the regulation, describe the deficiency with reasonable specifics--who, what, where and to what extent. If you are citing multiple deficiencies that pertain to the same regulation, group them together rather than documenting each one separately. When grouping a number of deficiencies that apply to a section and its subsections, identify each subsection.

Discuss and develop a reasonable Plan of Correction with the licensee/administrator. Clearly explain how and when each deficiency must be corrected following each citation.

(d)(4)(D) PROCEDURE

After considering the factors identified in (4)(A)(1) through (4) above, it may be necessary to establish interim corrective steps to achieve a final correction due date that is fair and reasonable. For example, a licensee may be cited for damaged floor coverings throughout the center. Due to inconvenience to children, and the time necessary for delivery and installation of new carpets and linoleum, interim due dates may be established for specified rooms.

The licensee may request a review of a licensing decision (See Section 101196). As a result of this review, the Regional Manager (or designee, who is at a higher staff level than an evaluator) may uphold, amend or dismiss the licensing decision. The evaluator is not authorized to make these decisions. The licensee’s request should be made in writing within ten days of receipt of the Facility Evaluation Report (LIC 809) or the Facility Civil Penalty Assessment (LIC 421). The Penalty Review (LIC 178) is sent to the licensee as official notification of the administrative review.

There will be occasions when, because of the deficiency cited, the licensee will be unable to immediately provide a Plan of Correction. For example, your tour of a child care center reveals that the roof is leaking. The licensee states that he or she cannot provide a Plan of Correction before talking to a contractor. As an interim Plan of Correction, you may choose to require that within 10 days the center secure a contractor and specify a reasonable completion date for the repair of the roof.
(d)(4)(D) PROCEDURE (Continued)

Point out to the center that the more specific the Plan of Correction the easier it is to jointly identify a reasonable correction date and the less chance there is for any misunderstanding when you return to determine if the deficiency has been corrected.

NOTE: Health and Safety Code Section 1597.05(b) states: “A licensee shall have 30 days after the employment of a staff person or enrollment of a child to secure records requiring information from sources not in the control of the licensee, staff person, or child.” These records include, but are not limited to, physical examination reports, immunization reports and director/teacher transcripts. Accordingly, because no record-keeping deficiency exists until the 31st day after employment or enrollment, no citation of deficiency can be issued prior to that time.

(d)(5) POLICY

Licensing regulations require you to issue a notice of deficiency during the licensing visit when civil penalties are involved. In issuing the notice, you must state on the LIC 809 whether the violation is a Type A or a Type B deficiency, the amount of the penalty if the deficiency is not corrected, and the date the penalty begins. (See Reference Material Section 1-0040 through 1-0070.)

Reference Material Section 1-0040 through 1-0070 specifies the categories of civil penalties, progressive civil penalties for repeat violations and maximum per day civil penalty assessments.

PROCEDURE

Attempt to set common correction dates. This is not always possible when Type A deficiencies that require immediate (24-hour) correction are involved. If you determine that there are no Type A deficiencies and establish a single plan-of-correction date, you may write, “All deficiencies must be corrected by (the specific date) or be subject to civil penalties. Civil penalties shall be assessed in accordance with Reference Material Section 1-0040 through 1-0070.

101193 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE

(a) PROCEDURE

The Facility Evaluation Report (LIC 809) is used when following up on a Plan of Correction. Your follow-up visit shall be made not later than ten working days after the latest Plan of Correction date established during your original visit. You may need to schedule an earlier follow-up visit when Type A deficiencies requiring immediate (24-hour) correction have been cited. When your follow-up visit verifies that deficiencies have been satisfactorily corrected, you clear the Plan of Corrections by stating on the LIC 809 how the corrections were made and that “no civil penalty [was] assessed.”
PROCEDURE

When a civil penalty is assessed, reference the report to the original notice stating: “Deficiencies listed below have not been corrected by the Plan of Correction date on the of [Facility Evaluation Report (date)]. See previous report for details.” List all of the uncorrected deficiencies by number, regulation code and section(s) that correspond to the original LIC 809. Then briefly explain why the deficiencies were not corrected. You are then ready to issue the Facility Civil Penalty Assessment (LIC 421).

The purpose of the LIC 421 is to indicate to the licensee and the Regional Office the exact date the penalty began and the amount owed at the time of the visit. Enter the date of the visit in the upper left-hand corner of the LIC 421. In establishing the dates covered by the penalty, the penalty begins the day following the Plan of Correction date and includes the day of your visit. If, for example, the correction on a Type A or Type B deficiency ($50) was due on the first of the month and your visit was on the fifth, the penalty would be assessed for the second through the fifth in the amount of $200 with $50 per day thereafter to continue until correction is made.

At the conclusion of the follow-up visit, complete the following forms:

1. Facility Evaluation Report (LIC 809) and any supporting documentation.

2. Facility Civil Penalty Assessment (LIC 421) (not needed if all corrections have been completed).

The evaluator is to complete the LIC 421 during the site visit. The LIC 421 is to be completed in its entirety, describing those regulatory sections and/or Health and Safety Code sections that have been violated. Be sure to accurately complete that portion of the form that sets the amount of the initial penalty and documents the period of time for which the penalty is assessed.

The beginning date for the assessment is the day following the Plan of Correction date (date by which the deficiency was to be corrected). The second date shown is the date of the follow-up visit. This date should be the same as the date the LIC 421 is prepared. These dates are important for use by clerical staff in setting up the facility penalty ledger for billings.
PROCEDURE

At any time during the penalty assessment process, the Department may request a noncompliance conference (Reference Material Section 1-0300) and Section 101194) with the licensee for the purpose of establishing a Plan of Correction date and a plan for achieving compliance. If no notice of correction has been received from the licensee by the end of the 30-calendar-day assessment period, a follow-up visit shall be scheduled as soon as possible. This visit is for the purpose of determining if deficiencies have been corrected.

The following describes three general situations you may encounter and the appropriate action to take.

**Situation #1**

At the time of the follow-up visit, if the deficiencies have been corrected, complete an LIC 809 documenting the visit and that the deficiencies have been corrected. The evaluator is not required to take any further action on these deficiencies. However, the licensee is liable for any penalties that have accrued for 30 calendar days, or until the date the deficiencies were corrected and verified (See Section 101195(e)), whichever is the earlier date. (See Section 101194(c) for explanation of Collection Procedures.)

**Situation #2**

The follow-up visit at the center indicates that the licensee has not corrected the deficiencies but is able to verify that corrective action is in progress (e.g., the licensee has a contract for the work to be done and/or related receipts). In this situation, prepare an LIC 809 stating the action taken thus far by the licensee to comply with the regulations and establishing a new Plan of Correction date. The new Plan of Correction date should be realistic based on the licensee’s ability to comply with the regulations. For example, if window glass is on order and will be available in 2 weeks, establishing a Plan of Correction date of one week is not realistic. But in no case can the Plan of Correction date be longer than 30 calendar days (except as specified in Sections 101193(d)(4)(B) and (C)).

Visit the center within ten days of the above Plan of Correction date to ensure compliance (see Section 101194). If the licensee has corrected the deficiency, the evaluator is not required to take further action on the deficiency. But the licensee is responsible for all penalty assessments accrued. (See Section 101194(c) for an explanation of collection procedures.) If the licensee fails to meet this second Plan of Correction date, the procedure described below is to be followed.

**Situation #3**

At the time of the follow-up visit, if the deficiencies have not been corrected and the licensee has demonstrated no effort to comply, or if the licensee has failed to comply with the second Plan of Correction date, the procedure below must be followed:
(d) **PROCEDURE** (Continued)

Document on the LIC 809 the center’s failure to comply with the Plan of Correction date and again cite the center for noncompliance, following the requirements of Section 101193. Assessment of penalties cannot begin until a site visit is conducted, a new Plan of Correction date is established, etc. If the new Plan of Correction date is not met, another penalty assessment period must begin, which cannot run longer than 30 days.

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**PROCEDURE**

Once civil penalties have been assessed, it is the licensee’s responsibility to notify the Regional Office that the corrections have been made. This notification need not be in writing. If it is necessary to make a site visit to verify corrections, the visit must be made within five working days of notification. Upon verifying the correction(s), the total amount of the fine is computed from the date following the Plan of Correction date through the date the licensee notified the office.

When a licensee notifies the Regional Office that deficiencies have been corrected, document the date and summarize the information received on the Contact Sheet (LIC 185). It may be necessary to schedule a site visit to verify the correction(s).

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**POLICY**

Civil penalties may be paid in installments. All requests for an installment payment shall be in writing. Inquiries and/or verbal requests made by telephone shall be documented on the Contact Sheet (LIC 185) and placed in the facility file. The licensee (or designee) shall be advised to follow up the telephone/verbal request to the Department with a written request.

**PROCEDURE**

If the licensee (or designee) requests a noncompliance conference, the conference shall be documented on the Facility Evaluation Report (LIC 809) according to established procedures. (See Reference Material Section 1-0300)

The Regional Office Manager (or designated staff) shall document the following:

1. Basis for approval or denial of the request;
2. If approved, the established installment schedule, amount of payment and due dates.
Civil penalty assessments shall be cleared within a 2-month payment schedule. However, if this payment schedule would impair the provision of the level of care and supervision as required by regulation, the Regional Manager (or designated staff) may approve an extended payment schedule. The extended payment schedule shall not exceed a total of four months unless approval to further extend the payment schedule is obtained from the Child Care Program Administrator.

Installment payments of not less than $50 per month must be made to avoid further action by the Department, such as referral to Small Claims Court.

Written confirmation of the approved/denied installment payment request shall be sent to the licensee.

Forward all documentation to the clerk for processing of the Notice of Civil Penalties Due (LIC 422).

The Contact Sheet (LIC 185) and the licensee’s letter or the LIC 809 shall be forwarded to the Regional Manager (or designated staff) for review and approval or denial.

The Regional Manager (or designated staff) shall apply the following standards when establishing a civil penalty installment payment schedule:

1. The amount of the outstanding civil penalty assessment must be $50 or more; and, in addition, at least one of the following shall exist:
   a. The source(s) of income and/or available resources of the licensee demonstrate an inability to make the payment as assessed; or
   b. The payment of the total outstanding civil penalty assessment due adversely impacts the level of care and supervision.

Advising the Local Unit Manager and clerk of the status of the penalty. In the event the licensee fails to pay the assessment, appropriate steps shall be taken to secure a judgment in Small Claims Court. If it becomes necessary to go to Small Claims Court, discuss the methods and format of your presentation to the court with your Local Unit Manager.

The appropriate forms to file a claim are available by either calling or writing the appropriate Small Claims Court. Normally you will file with the court located in the district where the defendant lives.
Prior to filing suit with the Small Claims Court, ensure that a final notice is sent to the licensee notifying them of the following: (1) the total amount due; and 2) that if the debt is not cleared, or arrangements made for payment, Small Claims Court proceedings will be initiated. The Notice of Civil Penalties Due (LIC 422) shall be used for this purpose. The evaluator must ensure that the amount entered on the LIC 422 as “Balance Due” is the exact amount for which the licensee will be sued in Small Claims Court. The LIC 422 must state that it is the final notice and that failure to clear the debt will result in Small Claims Court action.

It is recommended that Small Claims Court action be initiated within 30 days from the date the final notice was sent to the licensee. However, Small Claims Court action must be initiated within one year of the date that civil penalty assessments began. That is, if a civil penalty was assessed beginning June 5, 1985, action must be taken by June 4, 1986. It is necessary to file with the court within one year because civil penalties are limited to a one-year statute of limitations. This means that if Small Claims Court action is initiated after this one-year period, the licensee can raise as a defense the fact that the statute of limitations has run out--and the case will be dismissed on that basis.

See Evaluator Manual Reference Material Section 2-7000 for procedures on collection of civil penalties.

The Regional Manager’s delegate will act as reviewer and may uphold, amend or dismiss the licensing decision. The reviewer may also extend the correction date. However, granting an extension should be the exception--and such an extension should be granted only when there is evidence that correction delays are beyond the control of the licensee.

Upon completion of the review, a Penalty Review (LIC 178) is drafted, which notifies the licensee of action taken on his/her appeal. A copy of the LIC 178 is kept in the facility file.
101200 INSPECTION AUTHORITY OF THE DEPARTMENT 101200

(a) POLICY

Health and Safety Code Section 1596.853 requires the Community Care Licensing Division to notify child care resource and referral agencies funded by the California Department of Education, Child Development Division, of the following:

1. Denial, revocation or Temporary Suspension Order actions, when issued against child care facilities; and
2. Cases of physical or sexual abuse within 24 hours of substantiation; and
3. Final resolution of both of the above.
4. The Department is to notify California Department of Education’s Child Development Division of substantiated serious allegations against facilities funded by the Child Development Division.

PROCEDURE

1. When any of the above conditions exist, ascertain if the facility or the Resource and Referral is funded by California Department of Education. (The Child Care Advocates have information in each area.)
2. The notification to the California Department of Education required in #4 above will only be done when there is a denial, revocation or Temporary Suspension Order issued against a California Department of Education-funded facility.
3. To notify Resource and Referrals and the California Department of Education of denial, revocation or Temporary Suspension Order actions, follow the procedures set forth in Sections 101206 and Reference Material Section 1-1260 related to notification of placement agencies, etc.
4. In situations where physical or sexual abuse have been substantiated, send a copy of the LIC 809 or other appropriate public document—which must at a minimum include the substance of the complaint and the results of the investigation—to the Resource and Referral within 24 hours of substantiation. When appropriate, be sure to keep the Resource and Referrals and the California Department of Education informed via letter of any appeals, etc., that may affect the outcome and final resolution of the case.
5. Coordination with the Child Care Advocate Program may be considered; however, the 24-hour notification requirement must be met.
6. When cases have been referred to Child Care Program Investigations, Child Care Program Investigations will contact the appropriate Regional Office—which will report to the Resource and Referral and/or the California Department of Education as required.

Notification is not required if California Department of Education funding is solely through the Office of Child Nutrition (food service).
(a) POLICY

For proper identification when visiting child care centers, all evaluators are to obtain a picture identification card issued by the State. Until this picture identification card is received, a letter of introduction on California Department of Social Services letterhead or an official state business card is acceptable.

An evaluation visit is required within 120 days of the anniversary date of the license. (See Reference Material Section 3-1530.)

A site visit for the sole purpose of checking for the completion of record-keeping deficiencies shall not be made if the child care center can mail copies of completed records to the Regional Office to satisfy the terms of the Plan of Correction. Continue to develop Plans of Correction and schedule follow-up site visits for all other deficiencies according to current procedures. (See Reference Material Sections 3-3600 and 3-3700.)

PROCEDURE

Refer to Reference Material Sections 3-1400, 3-3100 and 3-4000.
ARTICLE 5 ADMINISTRATIVE ACTIONS

101205 DENIAL OF INITIAL LICENSE

(a) POLICY

NOTE: The following is a list of some common conditions that may necessitate the denial of the application:

1. Failure to meet regulations for securing fire, health and sanitation clearances.

2. A history of criminal conviction with insufficient evidence of rehabilitation. (See Section 101170(g).)

3. The proposed physical plant does not meet the requirements.

4. The applicant fails to follow through with the application process.

5. Substantiation of the Child Abuse Index Check information.

PROCEDURE

When it is determined that an application will be denied, applicants shall not be given the option to withdraw the application prior to the denial action. In this circumstance, the Department shall not consent to a request to withdraw an application. If the Department accepts a withdrawal of the application in writing, the Department cannot proceed with any administrative action on the case. The decision and order resulting from an administrative hearing serves to officially document and record the denial. Health and Safety Code Section 1596.95(e) provides that the applicant must disclose previous disciplinary actions taken against him/her. Health and Safety Code Section 1596.851 provides for certain Community Care Licensing Division action based on past revocations if the individual applies for a license again. It is important, therefore, to record the denial actions for future reference. This process does not apply when an applicant withdraws his/her application and, at the time of the withdrawal action, the Department had no grounds for a license denial action. (See Section 101180)
101205  DENIAL OF INITIAL LICENSE  (Continued)  101205

PROCEDURE (Continued)

Review all applications that appear headed for denial with your Local Unit Manager. All denial actions must be fully documented and substantiated. The importance of this cannot be overemphasized. Reference Material Section 1-1130 outlines the documentation requirements for denial. Upon compiling the necessary documentation and consultation, a Notification of Initial Application Denial (LIC 192), over the Regional Manager’s signature, will advise the applicant in writing that the application is denied and inform him/her of the specific regulations that were not met. The Department shall send all denial letters by certified mail. A copy of the denial letter is sent to the Child Day Care Program Administrator. The denial letter further informs the applicant that the denial can be appealed within 15 days.

If the applicant appeals the denial, the Child Day Care Program Administrator acknowledges receipt of the letter and advises the applicant that an administrative hearing will be scheduled. A copy of the acknowledgment letter is sent to the Regional Office, where a Statement of Facts is prepared. The Child Day Care Program Administrator will initiate the steps necessary for an administrative hearing to review the denial action. You may be required to testify during this hearing. The documentation you previously gathered will be used to show why the denial action was justified. If the applicant does not file, a Notice of Defense, the denial is complete and no further action is needed other than verifying that the facility is not operating. (See Section 101157 and Reference Material Section 1-1140 through 1-1195.)

101206  REVOCATION OR SUSPENSION OF A LICENSE  101206

(a)

POLICY

The Community Care Licensing Division is to notify child care resource and referral agencies funded by the California Department of Education, Child Development Division, of the following:

1. Revocation or Temporary Suspension Order actions, when issued against child care centers; and

2. Cases of physical or sexual abuse within 24 hours of substantiation; and

3. Final resolution of both of the above.

4. The Department is to notify the California Department of Education’s Child Development Division of substantiated serious allegations against facilities funded by the Child Development Division.
(a) POLICY (Continued)

Notification is not required if the California Department of Education funding is solely through the Office of Child Nutrition (food service).

In addition, within 2 working days of receipt by the Department’s legal staff of evidence that a death or serious injury was due to abuse or willful neglect, the Department must temporarily suspend the facility’s license, registration or special permit.

For purposes of the 2-day Temporary Suspension Order requirement, this statute defines serious injury as a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily limb or organ, a wound requiring extensive suturing, and serious disfigurement.

NOTE: This requirement only applies to death or the above specific physical injuries.

Health and Safety Code Section 1596.8895 requires that written notification of a Temporary Suspension Order be sent to the authorized representative of each child receiving services in the facility. In addition, the Department shall post a notice of the Temporary Suspension Order at the facility site in an area that is readily visible and accessible to authorized representatives of children in care. Removal of this posted notice while the Temporary Suspension Order is in effect is punishable by a $500 fine.

(a) PROCEDURE

Procedure for notification of Resource and Referrals and California Department of Education:

1. When any of the above conditions exist, ascertain if the facility or the Resource and Referral is funded by the California Department of Education. (The Child Care Advocate has this information.)

2. The notification of the California Department of Education required in #4 above will only be done when there is a denial, revocation or Temporary Suspension Order issued against a California Department of Education-funded center.

3. To notify Resource and Referrals and the California Department of Education of denial, revocation or Temporary Suspension Order actions, follow the procedures set forth in Sections 101205 and 101206 and in the Reference Material Section 1-1260 related to notification of placement agencies, etc.

4. In situations where physical or sexual abuse have been substantiated, send a copy of the Facility Evaluation Report (LIC 809) or other appropriate public document—which must include at a minimum the substance of the complaint and the results of the investigation—to the Resource and Referral within 24 hours of substantiation. When appropriate, be sure to keep the Resource and Referrals and California Department of Education informed via letter of any appeals, etc., that may affect the outcome and final resolution of the case.
5. Coordination with the Child Care Advocate Program may be considered; however, the 24-hour notification requirement must be met.

6. When cases have been referred to the Central Operations Branch Audits Section, Central Operations Brach Audits will contact the appropriate Regional Office, which will report to the Resource and Referral and/or California Department of Education as required.

Procedure for Expedited (2-Day) Temporary Suspension Orders

1. Temporary Suspension Orders involving death or serious injury, as defined above, are given top priority.

2. Upon receipt of evidence substantiating that the death or serious injury (a) occurred at the facility and (b) was due to licensee or facility staff abuse or willful neglect, the Regional Office shall immediately forward all appropriate documentation to the Child Care Program Office. The Child Care Program Office shall immediately review and forward the documentation to Legal for action.

3. Legal will evaluate the material and prepare a Temporary Suspension Order within 2 days of receipt if legal staff believe the evidence will support the action.

Procedure for Temporary Suspension Order Notice

In addition to existing Temporary Suspension Order procedures, a copy of the Temporary Suspension Order notice will be sent to each authorized representative. A letter may be used in place of a copy of the Temporary Suspension Order; however, the letter must be approved by Legal prior to release.

A copy of the Temporary Suspension Order notice or approved letter will be posted by the Department at the facility’s main entrance where authorized representatives drop off and pick up children. If you observe the removal of this notice, contact the local law enforcement agency for issuance of a citation for said removal.

See Section 101186(a) for forfeiture of license conditions and procedures.
ARTICLE 6 CONTINUING REQUIREMENTS

101212 REPORTING REQUIREMENTS

(c) POLICY

In most cases, swimming pools, room additions, enclosures, etc., added after establishing a maximum indoor or outdoor capacity will reduce the available square footage and result in lowered licensed capacities.

PROCEDURE

Emphasize the importance of this subsection during orientation sessions and at other opportunities during initial licensure.

See Section 101237.

101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS AND DUTIES

(d) POLICY

The Department may require a child care center director to increase the amount of time he or she spends at the center if it is determined that the absence of the director has a detrimental effect on the center’s operation.

PROCEDURE

Review center records and, if appropriate, interview staff to determine whether or not the director is at the center and is spending enough time operating and managing the center. Document findings on the Facility Evaluation Report (LIC 809).

(h)(1) POLICY

References must be used to verify experience.
Effective February 1, 1997, the California Commission on Teacher Credentialing adopted a new Child Development Permit with six levels. The Department recognizes the new permit as acceptable for meeting Title 22 staff qualifications requirement.

PROCEDURE

Accept the Child Development Site Supervisor Permit or the Child Development Program Director Permit as meeting Title 22 staff qualifications requirements for directors.

POLICY

Education Code Section 8208 states:

(z)(1) “Site supervisor” means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

(z)(2) In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

Education Code Section 8208 states:

(u) “Program director” means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.
Accordingly, Education Code Section 8244 states:

(a)(1) Any entity operating child care and development programs funded pursuant to this chapter that provide direct services to children at 2 or more sites, including through more than one contract or subcontract funded pursuant to this chapter, shall employ a program director.

(a)(2) Programs providing direct services to children, for the purposes of this section, are general child care and development programs pursuant to Article 8 (commencing with Section 8240), migrant child care and development programs pursuant to Article 6 (commencing with Section 8230), campus child care and development programs pursuant to Article 4 (commencing with Section 8225), state preschool programs pursuant to Article 7 (commencing with Section 8235), child care and development services for children with special needs programs pursuant to Article 9 (commencing with Section 8250), infant care and development services programs pursuant to Article 17 (commencing with Section 8390), and any of these programs operated through family child care homes.

(b)(1) For purposes of this section the following definitions shall apply:

(A) “Administrative responsibility” means awareness of the financial and business circumstances of the program, and, in appropriate cases, supervision of administrative and support personnel and the knowledge and authority to direct or modify administrative practices and procedures to ensure compliance to administrative and financial standards imposed by law.

(B) “Program director” means a person who, regardless of his or her title, has programmatic and administrative responsibility for a child care and development program that provides direct services to children at 2 or more sites.
101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS
AND DUTIES  (Continued)

POLICY  (Continued)

(C) “Programmatic responsibility” means overall supervision of
curriculum and instructional staff, including instructional aides,
and the knowledge and authority to direct or modify program
practices and procedures to ensure compliance to applicable
quality and health and safety standards imposed by law....

(c) The program director also may serve as the site supervisor at one of the
sites, provided that he or she both fulfills the duties of a “day care center
director,” as set forth in Section 101315 of Title 22 of the California
Code of Regulations, and meets the qualifications for a site supervisor
as set forth in subdivision (aa) of Section 8208.

(d) The Superintendent of Public Instruction may waive the qualifications
for program director described in Sections 8360.1 and 8360.3 upon a
finding of the following circumstances:

(1) The applicant is making satisfactory progress toward securing a
permit issued by the Commission on Teacher Credentialing
authorizing supervision of a child care and development
program operating in 2 or more sites or fulfilling the
qualifications for program directors in severely handicapped
programs, as specified in Section 8360.3.

(2) The place of employment is so remote from institutions offering
the necessary coursework as to make continuing education
impracticable and the contractor has made a diligent search but
has been unable to hire a more qualified applicant.
(e) The Superintendent of Public Instruction, upon good cause, may by rule identify and apply grounds in addition to those specified in subdivision (d) for granting a waiver of the qualifications for program director.

Education Code Section 8360.1 states:

Except as waived under Section 8242 and except as stated in Section 18203 of Title 5 of the California Code of Regulations regarding program directors in school-age community child care services programs, any entity operating child care and development programs providing direct services to children, as defined in Section 8244, at 2 or more sites, shall employ a program director who possesses one of the following:

(a) A permit issued by the Commission on Teacher Credentialing authorizing supervision of a child care and development program operating in multiple sites.

(b) Any person who meets the following criteria is eligible to supervise a child care and development program operating in multiple sites and serve in an instructional capacity in a child care and development program:

(1) Possesses a current credential issued by the Commission on Teacher Credentialing authorizing teaching experience in elementary school or a single subject credential in home economics.

(2) Six units in administration and supervision of early childhood education or child development, or both. The requirement set forth in this paragraph does not apply to any person who was employed as a program director prior to January 1, 1993, in a child care and development program receiving funding under this chapter.
POLICY (Continued)

(3) Twelve units in early childhood education or child development, or both, or at least 2 years’ experience in early childhood education or a child care and development program.

(c) A waiver issued by the Superintendent of Public Instruction pursuant to Section 8244.

This section shall become operative on January 1, 1997.

In addition, the California Department of Education, Child Development Division’s (California Department of Education-Child Development Division) Funding Terms and Conditions, Child Care and Development Programs (which are applicable to preschool programs), Section VI. Staffing Qualifications, states in part:

A. Program Director

If the contractor operates at 2 or more sites, the contractor shall employ a program director who has administrative and programmatic responsibility for the program. The program director shall hold a children’s center supervision permit, or its equivalent, as specified in Education Code Section 8360.1 or shall hold a waiver of these requirements issued by the Superintendent of Public Instruction. The Superintendent of Public Instruction may issue this waiver if the superintendent determines that the contractor has documented a compelling need to do so and that the candidate has satisfied any additional criteria required by statute.

B. Site Supervisor

At each site there shall be a person designated as the site supervisor who has operational program responsibility for the program. A site supervisor shall meet the qualifications specified in Title 22 California Code of Regulations, Community Care Licensing Standards for “program director” and shall hold a regular children’s center instructional permit and shall have completed not less than six units of administration and supervision of early childhood education or development, or both.

The Child Development Division shall grant a waiver of this requirement upon a contractor’s demonstration of the existence of compelling need. Factors the Child Development Division shall consider in determining compelling need are as follows:
(Continued)

**POLICY** (Continued)

(1) evidence that the contractor’s recruitment efforts have not been successful in obtaining qualified applicants; (2) evidence of the contractor’s inability to offer competitive salaries and/or (3) evidence of potential or current staff’s lack of reasonable access to training resources which offer required course work.

However, the site supervisor shall, at a minimum, meet the qualifications specified in Title 22 California Code of Regulations, Community Care Licensing Standards for “program director.”

Relative to Title 22, Health and Safety Code Section 1596.8716(b) states:

For licensing purposes, a school principal of a public school that operates a child care and development program under contract with the State Department of Education pursuant to Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of the Education Code shall be deemed qualified to be a day care center director pursuant to Section 101315 [now Section 101215.1] of Title 22 of the California Code of Regulations only when the program is located on the campus of an operating public school, with staff who are employees of the public school.

In addition, as indicated in the previously cited Education Code Section 8360.1, a director of a state preschool program may qualify by having a permit issued by the Commission on Teacher Credentialing authorizing supervision of a child care and development program operating in multiple sites, OR by meeting the following criteria:

1. He or she must possess a current credential issued by the Commission on Teacher Credentialing authorizing teaching experience in elementary school or a single subject credential in home economics; AND

2. He or she must have six units in administration and supervision of early childhood education or child development, or both. The requirement set forth in this paragraph does not apply to any person who was employed as a program director prior to January 1, 1993, in a child care and development program receiving funding under this chapter. He or she must have 12 units in early childhood education or child development, or both, or at least 2 years’ experience in early childhood education or a child care and development program.
The regulations do not address the distances buildings must be from one another to be considered “onsite.” We interpret “onsite” to mean buildings on the same grounds, with one address as one site. The intent is to assure that the director is readily accessible and able to attend to the needs of the child care center. Therefore, the principal can be in another building and still be “onsite.”

**PROCEDURE**

To verify that the individual is the school principal, review appropriate documentation, which shall include, but not be limited to, copies of the Administrative Credential, the Administrative Services Credential, a letter from the school stating the individual is the principal, etc.

A director of a state preschool program who qualifies under Education Code Section 8360.1 shall be required to submit documentation that he/she meets the specified provisions. Such documentation shall include copies of transcripts verifying the 12-unit requirement, letters of experience, etc. Use the exception process for approving a state preschool director who qualifies under Education Section 8360.1.

If the state preschool program is in a building on a school site, and if the school principal is also the state preschool program director, a citation for no “on-site” director is not appropriate and shall not be made even though the principal may not be in the preschool area. Citations are only issued for the violation of regulations. If the director does not carry out the duties and functions specified in Sections 101215 and 101215.1, then it is appropriate to cite.

All state universities have an international programs office that may be contacted to determine the status of foreign colleges and universities (e.g., accredited, recognized, etc.). Translations may also be obtained if the office is staffed with someone who has the needed language background.
(i) POLICY (Continued)

If the needed translator is not available at a specific campus, any of the other campuses statewide may be contacted to locate the needed translator. This service is free of charge to the general public as well as to organizations.

An alternative location for obtaining translations only is the California Department of Social Services Language Services Bureau, 744 P Street, Room 1440 (MS 14-24), Sacramento, California, 95814, ATSS 8-473-9562 or (916) 323-9562. This office will do one of 2 things:

1. Provide a written translation of all necessary documents if the office is staffed with the needed translator; or

2. Notify you if the needed translator is not available. At your request, the office will then secure the services of a consultant translator. This service is available for a fee that is determined by the consultant and paid for by the requestor (e.g., Community Care Licensing Division, etc.). To secure these services, you must attach to the transcript a memorandum requesting the service and forward it to the above address. The memorandum must include your unit code for billing purposes, the needed service, and a designated contact person should the Language Services Bureau have any questions. Generally, the fee runs about $25 for the first page and $20 for each subsequent page.

Since neither the California State University nor the University of California systems accepts certificates of completion from non-accredited Montessori institutions (including California Department of Education-approved institutions), neither will be able to provide you with any assistance in this area. However, a third alternative for obtaining translations and determining the status of foreign educational institutions (including Montessori institutions) is to contact the International Education Research Foundation, Credentials Evaluation Service, P.O. Box 3665, Culver City, California, 90231-3665. Phone: (310) 258-9451; Fax: (310) 342-7086, e-mail: info@ierf.org, website: www.ierf.org. The amount of the fee varies, ranging from $75 to $300.

The above director qualifications also apply to programs funded by California Code of Regulations Title 5.

This information is to direct you to resources necessary in determining acceptability of course work completed at educational institutions outside California and the United States. Additionally, resources are identified where translations of documents in foreign languages may be obtained.
POLICY (Continued)

It is incumbent upon the applicant/licensee to provide all necessary documentation to verify staff qualifications involving course work completed at foreign schools, including Montessori institutions. The applicant/licensee must provide proof that the foreign school where the course work was completed is a bona fide school. Such proof may include documentation from a local governmental agency in the area where the institution is located. Therefore, the following information should be made available to the applicant/licensee as necessary.

The American Montessori Society, 281 Park Avenue South, Sixth Floor, New York, New York, 10010, (212) 358-1250, is another source to which you should direct applicants/licensees regarding certificates of completion issued by Montessori institutions.

The certificate of completion must be accompanied by course descriptions so that you can determine whether appropriate course work has been completed. Remember that if the person is applying for a position as a director, he or she must provide proof of having completed course work in administration or staff relations. In addition, specific courses (as detailed in the regulations) are required for teacher qualifications as well. Again, it is incumbent upon the applicant/licensee to provide proof that he or she complies with all standards.

Each situation will require individual handling. It is recommended that the applicant/licensee do the legwork, particularly when a fee is involved.

PROCEDURE

Use the exception process to track completion of the required course work.
Licensees may use volunteers under 18 years of age as long as these volunteers do not provide direct care and supervision to children, are not used to supplement staff, and are under the constant supervision of a teacher/director. Further, these volunteers must affirm that they are in good health and present evidence of a recent tuberculosis test in accordance with Section 101216(g). Nothing in Title 22 would prohibit such a volunteer from being paid.

Examples of the above would include summer youth employment and high school and college intern programs. Even though these youths may be under 18 years of age and may or may not be paid for their services, they are not to be confused with teacher aides as specified in Section 101216.2.

For information on health-screening requirements for professionals who are generally employed by a school district (such as speech therapists) and who work alone with children with special needs, please see Issues 7 and 9 of the section on children with special needs under Evaluator Manual Section 101226 (Health-Related Services). This information also pertains to other employees of a school district.

The health screening shall be completed and signed by a physician or other health professional working under the direct supervision of a physician (e.g., a nurse practitioner or physician’s assistant). The physician’s evaluation shall certify that the person’s general health is adequate to carry out required responsibilities. The Health Screening Report--Facility Personnel (LIC 503) is available for this purpose.

Child care centers operated by religious organizations which depend on prayer or other spiritual means for healing and that are subject to licensure shall be granted a waiver for Sections 101216(g), 101217(b), 101220, 101221(b)(7) through (10), and 101226(b), (c), and (e) under the following conditions:

1. The entire administrative staff are adherents of the particular religion.
2. All children admitted to the center are adherents of the religion.
3. All non-administrative staff who are not adherents of the religion are informed in writing by the center that all staff are covered by the waiver and, therefore, that other employees who are adherents of the religion have not been medically cleared for tuberculosis or other infectious diseases.
(g) **POLICY** (Continued)

Child care centers operated by religious organizations that do not meet the above conditions for a waiver—or any other center—may be granted individual exceptions to the above sections for any staff member or child who is an adherent of a well-recognized church that relies solely on prayer or other spiritual means for healing. Centers must present satisfactory evidence to the Department that any persons who need an exception are free from any communicable disease. Such evidence shall be a written statement from a practitioner recognized by the religion in question for the purposes of healing.

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101216.1 **TEACHER QUALIFICATIONS AND DUTIES** 101216.1

(b) **POLICY**

Effective February 1, 1997, the California Commission on Teacher Credentialing adopted a new Child Development Permit with six levels. The Department recognizes the new permit as acceptable for meeting Title 22 staff qualifications requirements.

**PROCEDURE**

Accept the Child Development Assistant Permit as meeting Title 22 staff qualifications requirements for teachers (six units).

(b)(1)(A) **POLICY**

The director shall track completion of any remaining course work and shall require transcripts (or copies of transcripts) to verify successful completion.

**PROCEDURE**

Review director’s documentation at time of site visit.

(c)(1)(A) **PROCEDURE**

Review the Personnel Record (LIC 501) and transcripts.


101216.1 TEACHER QUALIFICATIONS AND DUTIES (Continued)

(c)(1)(C) POLICY

References must be used to verify experience.

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(c)(3) POLICY

Education Code Section 8360 states:

(a)(1) Child development programs shall include a career ladder program for classroom staff. Persons who are 18 years of age and older may be employed as aides and may be eligible for salary increases upon the completion of additional semester units in early childhood education or child development. The governing board of each contracting agency shall be encouraged to provide teachers and aides with salary increases for the successful completion of early childhood education or child development courses in six semester unit increments.

(a)(2) Persons employed as teachers shall possess a permit issued by the Commission on Teacher Credentialing authorizing service in the care, development, and instruction of children in a child care and development program.

In addition, according to Education Code Section 8360, any person who meets the following criteria is eligible to serve in an instructional capacity in a child care and development program:

(b)(1) Possesses a current credential issued by the Commission on Teacher Credentialing authorizing teaching service in elementary school or a single subject credential in home economics. [and]

(b)(2) Twelve units in early childhood education or child development, or both, or 2 years’ experience in early childhood education or a child care and development program.

Education Code Section 8360.2 states:

Not later than 95 days after the governing board of a public agency sets the date a person employed by that board shall begin service in a position requiring a children’s center instructional permit or a children’s center supervision permit, that person shall file, on or before that date, with the county superintendent of schools a valid permit issued on or before that date, authorizing him or her to serve in a position for which he or she was employed. Upon renewal of that permit, that person shall file that renewal with the county superintendent of schools no later than 95 days after the renewal.
In addition, the California Department of Education, Child Development Division Funding Terms and Conditions, Child Care and Development Programs (which are applicable to preschool programs), states in part that teachers shall have a valid instructional or teacher permit issued by the Commission on Teacher Credentialing, or shall meet the alternate requirements of Education Code Section 8360.

The requirements of Education Code Section 8360 are:

1. Possesses a current credential issued by the Commission on Teacher Credentialing authorizing teaching service in elementary school or a single subject credential in home economics; and

2. Has 12 units in early childhood education or child development, or both, or 2 years’ experience in early childhood education or a child care and development program.

For Title 22 licensing requirements, the above excerpts from Education Code Section 8360 and the California Department of Education-Child Development Division Funding Terms and Conditions mean an individual may qualify as a teacher in a state preschool if he or she meets one of the following:

1. The requirements of Title 22, Sections 101216 and 101216.2; or

2. The alternate requirements of Education Code Section 8360 cited immediately above.

Teachers who meet the alternate requirements of Education Code Section 8360 must obtain an exception to Section 101216.1 in order to teach in a state preschool program.

These provisions are also apply to teachers in federal Head Start programs.

**PROCEDURE**

Use the exception process for approving persons who do not meet the requirements of Section 101216.1 as teachers in state preschool and federal Head Start programs.

Teachers qualify under the alternate requirements of Education Code Section 8360 must submit documentation that they meet the specified provisions. Such documentation should include copies of transcripts verifying the 12-unit requirement, letters of experience, etc.
This information is to direct you to resources necessary to determine the acceptability of course work completed at educational institutions outside California and the United States. Additionally, resources are identified where translations of documents in foreign languages may be obtained.

It is incumbent upon the applicant/licensee to provide all necessary documentation to verify staff qualifications involving course work completed at foreign schools, including Montessori institutions. The applicant/licensee must provide proof that the foreign school where the course work was completed is a bona fide school. Such proof may include documentation from a local governmental agency in the area where the institution is located. Therefore, the following information should be made available to the applicant/licensee as necessary.

All state universities have an international programs office that may be contacted to determine the status of foreign colleges and universities (e.g., accredited, recognized, etc.). Translations may also be obtained if the office is staffed with someone with the needed language background. If the needed translator is not available at a specific campus, any of the other statewide campuses may be contacted for a translator. This service is free of charge to the general public and to agencies.

A second alternative for obtaining translations only is the Language Services Bureau, MS 16-24, ATSS 8-464-1282 or (916) 654-1282, located in Sacramento. The Language Services Bureau will do one of 2 things:

1. Provide a written translation of all necessary documents if the bureau has a translator; or

2. Notify you if a translator is not available. At your request, the bureau will secure the services of a consultant translator. This service is available for a fee that is determined by the consultant and paid for by the requestor (e.g., Community Care Licensing Division, etc.). To secure these services, you must attach to the transcript a memorandum requesting the service and forward both to the above address. The memorandum must include your unit code for billing purposes, the needed service and a designated contact person should the bureau have any questions. Generally, the fee runs about $25 for the first page and $20 for each subsequent page.
(d) **POLICY** (Continued)

Since neither the California State University nor the University of California systems accept certificates of completion from nonaccredited Montessori institutions (including California Department of Education-approved institutions), neither will be able to assist you in this area. However, a third alternative for obtaining translations and determining the status of foreign educational institutions, including Montessori institutions, is to contact the International Education Research Foundation, Credentials Evaluation Service, P.O. Box 3665, Culver City, California, 90231-3665. Phone: (310) 258-9451; Fax: (310) 342-7086, e-mail: info@ierf.org, website: www.ierf.org. The fee varies, ranging between $50 and $125.

The American Montessori Society, 281 Park Avenue South, New York, New York, 10010, (212) 358-1250, is another source to which you should direct the applicant/licensee regarding certificates of completion issued by Montessori institutions.

The certificate of completion must be accompanied with course descriptions so that you can determine whether appropriate course work has been completed. It is incumbent upon the applicant/licensee to provide proof that he or she complies with all standards.

Each situation will require individual handling. It is recommended that the applicant/licensee do the legwork, particularly when there is a fee involved.

**PROCEDURE**

Review the Personnel Record (LIC 501) and the Personnel Report (LIC 500) for the date of employment. A break in employment is considered any period of time during which a teacher is not actually employed in a child care center.

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**101216.2 TEACHER AIDE QUALIFICATIONS**

For information on the responsibility of child care center staff over aides provided by a school and working in a center on a daily basis, please see Issue 8 of the section on children with special needs under Evaluator Manual Section 101226 (Health-Related Services).
(a) **POLICY**

The best way to demonstrate the intent of a ratio is to visualize a large indoor activity area where one teacher is supervising 15 children and another is supervising nine children. Direct, visual observation is maintained for each child, the overall ratio is met and the center is still able to group children based on their ages, abilities and activities. In separate rooms or smaller activity areas where teachers are not in contact with one another and visual observation of children cannot be shared among teachers, a minimum ratio of 1:12 is required.

**Head Start Programs**

Head Start regulations allow one teacher and 2 parent assistants per 20 children. However, Title 22 teacher-child ratios are to be applied.

**PROCEDURE**

Review the Personnel Report (LIC 500) and compare against licensed capacity.

(c) **POLICY**

The California Department of Education, Child Development Division, recommends the following staffing patterns for programs funded by California Department of Education.

<table>
<thead>
<tr>
<th>Category</th>
<th>Adult/Child</th>
<th>Teacher/Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infants, 0 to 18 months old</td>
<td>1:3</td>
<td>1:18</td>
</tr>
<tr>
<td>Infants/toddlers, 18 months to 36 months old</td>
<td>1:4</td>
<td>1:16</td>
</tr>
<tr>
<td>Preschool, 36 months to enrollment in Kindergarten</td>
<td>1:8</td>
<td>1:24</td>
</tr>
<tr>
<td>School-age Enrolled in Kindergarten to 14 years old</td>
<td>1:14</td>
<td>1:28</td>
</tr>
</tbody>
</table>

**NOTE:** Adult/child ratio includes a teacher. A teacher must also possess a valid and current Child Development Teacher Permit or Child Development Master Teacher Permit.
This means that for every group of 18 infants, which is the maximum number of infants per grouping, there must be six adults, of which one adult must be a teacher who possesses a valid and current Child Development Teacher Permit or Child Development Master Teacher Permit. This means that for each group of 18 infants, or fraction thereof, there must be one teacher.

EXAMPLE:

Infant group size is 24

- 24 infants
- 18 infants maximum group size = 1 teacher + 5 adults
- 6 infants = 1 teacher + 1 adult

Total required staff: 2 teachers plus 6 adults for 24 infants.

PROCEDURE

If understaffing is suspected in these centers, contact the California Department of Education’s Child Development Division.

When a center is found to be out of compliance with the above staffing ratios, cite Section 101216.3(c) as your authority and use existing procedures for the LIC 809 process.

(e) POLICY

Persons on the substitute list must have a completed criminal record statement and fingerprint card on file at the center. The statement must be current. The statement and fingerprint card shall be forwarded to the Department within four days of the first day of work. (See Section 101170.)

PROCEDURE

Verify that the substitutes on the list have earned a minimum of six units in early childhood education or child development by review of their transcripts.
101216.3 TEACHER-CHILD RATIO  (Continued)

(h)(1)

POLICY

The emergency use of such persons should not exceed one day.

PROCEDURE

Ensure that the licensee has arranged for a qualified teacher substitute. If use of clerical, housekeeping or maintenance staff is suspected, interview staff to determine the frequency of their participation in direct child care.

101216.4 PRESCHOOL PROGRAM WITH TODDLER COMPONENT  101216.4

POLICY

Commencing January 1, 2016, a day care center serving preschool-age children with a toddler program described in this section shall extend the toddler program to serve children between 18 months and three years of age. This optional toddler program shall be subject to the following basic conditions:

• An amended application is submitted to and approved by the Department.

• Parents give permission for the placement of their children in the toddler program.

• A ratio of six children to one teacher is maintained for all children in attendance at the toddler program. An aide who is participating in on-the-job training may be substituted for a teacher when directly supervised by a fully qualified teacher.

• The maximum group size, with two teachers, or one fully qualified teacher and one aide, does not exceed 12 toddlers.

• The toddler program is conducted in areas separate from those used by older or younger children. Plans to alternate use of outdoor play space may be approved to achieve separation.

• All other preschool regulations are complied with.

The toddler program shall be considered an extension of the preschool license, without the need for a separate license.

PROCEDURE

Until regulations implementing this section are adopted by the Department, Licensing Program Analysts are to cite the following:
PROCEDURE (Continued)

• Health and Safety Code Section 1596.955: If any of the above conditions are not met, including if a child is enrolled in a toddler component of a preschool child care center and is less than 18 months of age or more than 36 months of age.

For the purposes of this section three years of age shall be considered 36 months of age.

When conducting an inspection of a Child Care Center serving preschool-age children with a toddler component, the Licensing Program Analyst will do the following:

• Inform the licensee of the change in the statute.
• Request the licensee submit an amended application to specify the change in age.
• No fee shall be charged for this specific amendment to the application.
• Once the application is submitted and approved by the Department, the Licensing Program Analyst is to update the facility information in the Licensing Information System.
• Send a copy of the new license to the licensee.

(a)

POLICY

A valid water-safety certificate is one that has been obtained from a recognized first-aid or life-safety organization, such as a state or county emergency service organization or the American Red Cross. It is not the intent of the regulation to require that an individual be competent as a water-safety instructor or lifeguard; rather, the intent is that the adult be able to swim and have basic skills in this area.

(b)(1)

POLICY

If there is a lifeguard on duty, it is not necessary to have a center staff person with a valid water-safety certificate present; however, the licensee must ensure the appropriate ratio of adults and/or staff present for general supervision.

(d)(1)

POLICY

Staff records may be maintained in the Personnel Office or at a central administrative location provided they are readily available to licensing staff at the time of a site visit.

(d)(1)

PROCEDURE

Within one hour of a request by the Department to review staff records, the licensee shall transport the staff records to the child care center. This request should be made immediately upon arrival, or as soon as it is determined that staff records will be reviewed.
101218  ADMISSION POLICIES

(b)  

POLICY

Center staff shall make this assessment during the pre-enrollment interview(s) with the authorized representative of a child with disabilities, and shall monitor the child’s progress during his/her stay at the center.

PROCEDURE

Ensure that an interview(s) has been conducted. Also ensure that the child in question is continuously observed by center staff pursuant to Section 101226.3.

101220  CHILD’S MEDICAL ASSESSMENTS

(b)(2)  

POLICY

A child who attends a child care center is no longer automatically required to have a skin test for tuberculosis. Instead, the child is to be evaluated for risk factors for tuberculosis as part of his or her medical assessment. A child is only required to have a Mantoux skin test for tuberculosis if determined to be necessary by a physician based on the child’s risk factors for tuberculosis.

This policy change is being made at the request of the tuberculosis Control Branch of the California Department of Health Services. It is based on state and national consensus recommendations for tuberculosis testing. According to the Committee on Infectious Diseases of the American Academy of Pediatrics, routine skin testing for tuberculosis “has either a low yield of positive results or a large number of false-positive results and represents an inefficient use of limited health care resources.” Therefore, the American Academy of Pediatrics states that children without risk factors don’t need to have routine skin testing for tuberculosis.

PROCEDURE

Use the revised Physician’s Report—Child Care Centers (LIC 701) for all new children entering child care centers. This form has a box titled “Screening of Tuberculosis Risk Factors” that the child’s physician or designee must complete. The risk factors for tuberculosis in children are on the back of the form.

The child care center regulations will be amended as soon as possible to reflect the revised tuberculosis testing policy.

(d) (2)  

POLICY

Please see the Policy and Procedure statement under Section 101220(b)(2) for an explanation of the revised tuberculosis testing policy for children who attend child care centers.
101220 CHILD’S MEDICAL ASSESSMENTS (Continued)

PROCEDURE

Ensure that a Physician’s Report—Child Care Centers (LIC 701) is on file for each child.

(c)

POLICY

By separate authority, schools are required to obtain medical examination information and monitor immunizations—and to maintain related documentation. But centers must still obtain health history information from each child’s authorized representative in order to be able to understand each child’s expected level of activity and to disclose disorders such as allergies, asthma, diabetes, etc.

PROCEDURE

Ensure that a Child’s Pre-Admission Health History—Parents’ Report (LIC 702), or its equivalent, is on file for each child.

(f)(2)

POLICY

Such statements shall be on file at the center.

101220.1 IMMUNIZATIONS

(a)

POLICY

A child may not attend a child care center until after the child’s immunization record is obtained. No longer may a child attend while the child’s authorized representative obtains information from the child’s physician. There is no grace period for newly entering children. However, children may attend the center if they lack vaccine doses for which they are not yet due. To continue to attend the center, they must get the additional immunizations needed at the appropriate times. It is the responsibility of the center to follow up on these children.

NOTE: As indicated in Section 101220.1(e), a child may also attend a child care center under either one of the following circumstances: 1) a physician provides a written statement that an immunization(s) should not be given to a child and specifies how long the exemption is expected to be needed; or 2) the child’s authorized representative provides a written statement that immunizations are contrary to his/her personal or religious beliefs.

PROCEDURE

Child care center staff must transcribe the information from the immunization record provided by the child’s authorized representative onto the blue California School Immunization Record (the PM 286, or “blue card”). Subject to availability, blue cards can be obtained from the California Department of Social Services warehouse or the local county health department. Staff should follow the instructions on the back of the blue card. Staff must initial and date the PM 286 where indicated to verify that they have transferred the appropriate immunization information onto the blue cards. Blue cards may not be sent home for authorized representatives to complete.
101220.1 IMMUNIZATIONS (Continued)

(g) PROCEDURE

If the documentation appears inadequate, alert the local county health department.

(i) POLICY

By separate authority, public and private schools are required to monitor immunizations.

101221 CHILD’S RECORDS

(a) POLICY

Infant, preschool and school-age children’s records may be kept at a Central Program Office provided the following original documentation is kept at the center:

1. Record of current medications, name of prescribing physician and related instructions;
2. Name, address and telephone number(s) of the authorized representative;
3. Name, address and telephone number of the child’s physician and any other medical and mental health providers.
4. Medical assessment;
5. Dietary restrictions and allergies;
6. Instructions for action to be taken in case the child’s authorized representative, or the physician designated by the authorized representative, cannot be reached in an emergency;
7. Name, address and telephone number(s) of relatives or others who can assume responsibility for the child if the authorized representative cannot be reached when necessary;
8. A consent form for emergency medical treatment signed by the child’s authorized representative; and
9. In addition to the above, for infants, the following shall be maintained at the center:
   a. The individual feeding plan.
   b. Any services needed by the child that are different from those provided by the center’s normal program. (See Section 101419.2.)
PROCEDURE

Within one hour of a request by the Department to review children’s records, the licensee shall transport the records to the center. This request should be made immediately upon arrival, or as soon as it is determined that children’s records will be reviewed.

(b)

PROCEDURE

Review a sample of 10 percent, or a minimum of ten, of the children’s record files. Document your review on the Children’s Records Review (Child Care Center) (LIC 857). If the capacity of the center is less than ten children, review 100 percent of the children’s record files. If your review reveals any substantial problems, more records should be sampled.

(b)(5)

POLICY

Health and Safety Code Section 1596.841 requires that child care centers maintain a facility roster that includes each child’s name and address, the daytime phone number(s) of each child’s authorized representative, and the name and phone number of each child’s physician.

In addition, Health and Safety Code Section 1596.876 requires the licensee or person in charge of the center to release the address and phone number of the authorized representative of any child to a peace officer.

PROCEDURE

Ensure that a completed Identification and Emergency Information form (LIC 700), or its equivalent, is on file for each child.

Notify licensees at the time of a site visit that a roster is now required and that it must contain the information noted above. The LIC 809 will be used to state that the licensee was so instructed.

If a licensee refuses to comply with these requirements, cite the lack of compliance as a deficiency, using the appropriate Health and Safety Code Section as the authority.
(a)(5) POLICY

Children in licensed child care centers have the right to practice the religious beliefs of choice of their authorized representatives.

Centers operated by a religious organization may submit a request for a waiver of strict adherence to this section, since an authorized representative’s choice to send his or her child to a religious child care program is, in effect, an exercise of this right. On the Personal Rights form (LIC 613A), the center can omit Item No. 5 (which deals with religious rights) from the form—or can develop its own form as long as the remaining rights are listed.

To initiate the waiver process, the applicant should, according to Section 101175(b)(2), submit a request in writing to the Department outlining the center’s intent to either alter the Department’s the LIC 613A (omitting Item No. 5) or to develop its own form. If the center plans to develop its own form, an example of the proposed form should be included with the waiver request. The Department will respond with a written approval or denial of the request in accordance with the procedures outlined in Evaluator Manual Reference Material Section 2-5000, disregarding, in this case only, instructions in Section 2-5310 not to waive personal rights requirements.

(a)(7) POLICY

Restraints used as a means for controlling behavior are not allowed in child care centers.

The above includes the use of prone containment as a method of controlling children. The prone-containment prohibition applies to the restraint procedure in which a child is contained in a prone or supine (face-down or face-up) position on the floor or on a bed by staff members who apply their weight to the child’s legs, arms, buttocks and shoulders.

The prohibition against prone containment is not intended to preclude the use of reasonable force in emergency situations in which an assaultive child threatens death or serious injury to himself or others. Such a circumstance that develops suddenly and unexpectedly may require the use of prone containment to protect the child and/or others from the threat of serious injury or death. Prone containment should not be resorted to unless no alternative means of avoiding danger are available.

In such an extreme emergency, if prone containment is necessary, the following precautions shall be followed:

1. Children who are contained shall be observed at all times.

2. No pressure shall be applied on ankles, wrists, elbows, back, rib cage, knees, spinal column or the neck area.

3. No blankets, pillows, clothing or any type of covering shall be placed on the child’s head or face.
For reporting purposes, the use of prone containment is considered an unusual incident. As required by Section 101212(d)(1)(C), unusual incidents must be reported by telephone or fax to the Department within the Department’s next working day and during its normal business hours; a written report with more detailed information must also be sent to the Department within seven days. The report must include a description of the child’s assaultive behavior, the containment method used and its duration, and the staff involved. A recurrent need for the use of prone containment is evidence that the child in question is not appropriate for continued placement in a child care center.

Advance approval to use supportive restraints shall be by individual exception only. The Department shall grant such advance approval only if the requirements, policies and procedures of (1) through (4) below are met. (See Evaluator Manual Reference Material Section 2-5000.)

For those child care centers in which behavioral restraints have been allowed in the past, the Department shall reevaluate the exception when it expires and determine if the exception meets the criteria specified in this policy. In those cases where a center is using behavioral restraints and is not conforming with this policy, the Department shall advise the licensee that the restraints must be discontinued or the child(ren) relocated.

If the licensee refuses to discontinue the use of the restraint(s) or to relocate the child(ren), the Department shall take other administrative action as appropriate.

**101223.1 POSTURAL SUPPORTS/PROTECTIVE DEVICES**

(a)(1) **POLICY**

Soft ties mean soft cloth (e.g., muslin sheeting) that does not cause abrasion, that does not restrict blood circulation, and that can be easily removed in the event of an emergency. Under no circumstances shall supportive restraints include tying, depriving or limiting the use of a child’s hands or feet.

(a)(2) **POLICY**

1. Children may be placed in supportive restraints only upon the written order of a physician and with the written approval of the child’s authorized representative. Such order shall not run beyond 90 days without a reorder by a physician, based upon observation of the child.

2. Children in supportive restraints shall be observed at least every 30 minutes, or more often if needed, by the staff person responsible for the child’s care or by a supervisor. Observations shall be put in writing (for example, by using a card file, listing or log). This documentation shall be kept on file at the center.
(a)(2) POLICY (Continued)

At change of duty (shift change, etc.), oncoming responsible staff shall acknowledge in writing that the child is in a supportive restraint. This documentation—which may be in the form of a card file, listing, log, or note in the child’s record—shall verify that oncoming staff are aware of the child’s situation. A notation shall be made in the child’s record whenever a restraint is applied to or removed from the child.

PROCEDURE

See Policy for subsection (a)(7) of Section 101223 above for additional documentation required for use of prone containment.

(a)(4) POLICY

A postural restraint is not permitted without an appropriate fire clearance from the State Fire Marshal. For the purpose of securing an appropriate fire clearance, children in supportive restraints shall be considered nonambulatory. On the request for a fire clearance, it shall be noted that the center intends to use supportive restraints by marking Item 15 on the STD 850.

PROCEDURE

Advise support staff to note on the STD 850, Item 15, that the center intends to use supportive restraints. (See Sections 101152 n. (1) and 101171(b)).

101226 HEALTH-RELATED SERVICES

POLICY

As specified in Health and Safety Code Section 1596.750, in general Child Care Centers provide nonmedical care and supervision to children. However, the use of the term “nonmedical” does not preclude the provision of some incidental medical services to a child in a child day care facility as specified herein. This could include handling prescription and non-prescription medications, and providing other incidental medical services.

It is the responsibility of the licensee, not the Department, to make admission and retention decisions for individual children. It is the responsibility of the licensee to ensure the child’s needs can be met at the time of admission and throughout the child’s attendance at the facility (California Code of Regulations, Title 22, Sections 101214, 101215, 101216, 101218, 101218.1, 101219, 101226, and 101226.3).

As places of public accommodation, licensed child care facilities have obligations under federal and state disability laws including Title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12181 et seq., and the California Unruh Civil Rights Act and
California Disabled Persons Act (Civil Code Sections 51 et seq. and 54 et seq.). It is the responsibility of each child care licensee to determine the licensee’s legal obligations under the ADA and California disability laws. Disability laws require a child care facility to undertake an individualized assessment of a situation if the child care facility receives a request to provide incidental medical services as an accommodation to a child with a disability. Consistent with the policies below, the Department permits the provision of incidental medical services in licensed child care settings. Child care licensees may want to consult with an attorney for advice.

The U.S. Department of Justice operates a toll-free ADA Information Line to provide information and materials to the public about the requirements of the ADA. To get answers to technical questions, obtain general ADA information, or order free ADA materials, child care facilities, parents, and other members of the public may call 800-514-0301 (voice)/800-514-0383 (TTY).


Under specified circumstances as discussed more fully below, a licensee may provide incidental medical services when the parent/authorized representative has provided written authorization and obtained written instructions from the child’s physician. The licensee shall ensure that the intent to provide incidental medical services is included in the facility’s Plan of Operation. Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

The term “authorized representative” as used herein is defined in California Code of Regulations, Title 22, Section 101152(a)(5) as follows:

“Authorized Representative” means any person or entity authorized by law to act on behalf of any child. Such person or entity may include, but not be limited to, a minor's parent, a legal guardian, a conservator or a public placement agency.

**Blood-Glucose Monitoring for Diabetic Children**

**POLICY**

AB 221, Chapter 550 (Statutes of 1997) added Health and Safety Code Section 1596.797, effective January 1, 1998, to provide:

(a) Blood glucose testing for the purposes of monitoring a minor child diagnosed with diabetes may be performed in a child day care facility in accordance with paragraph (6) of subdivision (b) of Section 1241 of the Business and Professions Code.
AB 221 also amended Section 2058 of the Business and Professions Code. This section is part of the Medical Practice Act and allows obtaining a blood specimen by skin puncture for the purposes of performing blood glucose testing for the purpose of monitoring a minor child in accordance with paragraph (6) of subdivision (b) of Business and Professions Code Section 1241.

Section 1241 of the Business and Professions Code (Clinical Laboratory Technology) permits a trained layperson to perform blood glucose testing to monitor a child with diabetes if certain conditions are met:

- Child care staff performing the test must be entrusted with the child’s care by the child’s parent or authorized representative.

- The test must be approved by the U.S. Food and Drug Administration for over-the-counter sale to the public without a prescription.

- Child care staff performing the test must have written permission from the child’s parent or authorized representative to administer the test to the child.

- Child care staff performing the test must comply with written instructions from the child’s physician (or designee, such as a nurse practitioner).

- Child care staff performing the test must obtain written instructions from the child’s physician or designee regarding how to:
  - Properly use the monitoring instrument and handle any lancets, test stripes, cotton balls, or other items used while conducting the test. (All this must be in accordance with the manufacturer’s instructions).
  - Determine if the test results are within the normal or therapeutic range for the child, and any restrictions on activities or diet that may be necessary.
  - Identify the symptoms of hypoglycemia or hyperglycemia, and actions to take when results are not within the normal or therapeutic range for the child and any restrictions on activities or diet that may be necessary.
  - The written instructions must include the telephone numbers of the child’s physician and parent or authorized representative.
Child care staff performing the test must record the test results and provide them to the child’s parent or authorized representative on a daily basis.

Child Care Centers and Family Child Care Homes must post a list of universal precautions in a prominent place in the area where the test is performed.

Child care staff must comply with universal precautions.

Registration as required by Section 1241(c) of the Business and Professions Code.

Use the statutory provisions in Health and Safety Code Section 1596.797 and Business and Professions Code Section 1241 as the authority for implementation.

PROCEDURE

Licensing staff should ensure that applicants/licensees who wish to perform blood glucose monitoring do the following:

1. Include plans to provide this care in the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101173. Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

2. Notify the Department and update the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101212(e)(4). Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

3. Comply with Health and Safety Code Section 1596.797 (which refers to the conditions in Business and Professions Code Section 1241 identified above.)

Licensees who do not comply should be cited under the appropriate California Code of Regulations, Title 22 sections or Health and Safety Code Section 1596.797.

SAMPLE CITATION LANGUAGE: HEALTH AND SAFETY CODE SECTION 1596.797:

- The person performing the blood glucose test is not entrusted with the care and control of the child by the child’s parent or authorized representative.
• The blood glucose test used is not approved by the U.S. Food and Drug Administration for over-the-counter sale to the public without a prescription.

• The person performing the blood glucose test does not have the written permission from the child’s parent or authorized representative to administer the test.

• The person performing the blood glucose test is not complying with the written instructions from the child’s (insert physician or designee such as a nurse practitioner).

• The person performing the blood glucose test has not obtained written instructions from the child’s physician or designee regarding how to properly use the monitoring instrument and equipment.

• The person performing the blood glucose test has not obtained written instructions from the child’s physician or designee regarding how to determine if the results of the test are within the normal or therapeutic range for the child.

• The person performing the blood glucose test has not obtained written instructions from the child’s physician or designee regarding how to determine if any restrictions on activities or diet are necessary.

• The person performing the blood glucose test has not obtained written instructions from the child’s physician or designee regarding how to identify the symptoms of hypoglycemia or hyperglycemia, and actions to be taken when the results are not within the normal or therapeutic range for the child.

• The written instructions for the blood glucose test do not include the telephone number of the child’s physician.

• The written instructions for the blood glucose test do not include the telephone number for the child’s parent or authorized representative.

• The person performing the blood glucose test did not record the results of the blood glucose test.

• The person performing the blood glucose test did not provide the results of the blood glucose test to the child’s parent or authorized representative on a daily basis.
PROCEDURE (Continued)

- The person performing the blood glucose test did not comply with universal precautions.

- The person performing the blood glucose test did not post a list of universal precautions in a prominent place in the area where the test is given.

Administering Inhaled Medication

POLICY

Senate Bill 1663, Chapter 625, Statutes of 1998, added Health and Safety Code Section 1596.798 which specifies the requirements that must be met should licensees and staff persons in child care facilities administer inhaled medication to children in care.

Health and Safety Code Section 1596.798 states:

(a) Notwithstanding any other provision of law, licensees and staff of a child day care facility may administer inhaled medication to a child if all of the following requirements are met:

(1) The licensee or staff person has been provided with written authorization from the minor’s parent or legal guardian to administer inhaled medication and authorization to contact the child’s health care provider. The authorization shall include the telephone number and address of the minor’s parent or legal guardian.

(2) The licensee or staff person complies with specific written instructions from the child’s physician to which all of the following shall apply:

(A) The instructions shall contain all of the following information:

(i) Specific indications for administering the medication pursuant to the physician’s prescription.

(ii) Potential side effects and expected response.

(iii) Dose-form and amount to be administered pursuant to the physician’s prescription.
(iv) Actions to be taken in the event of side effects or incomplete treatment response pursuant to the physician’s prescription.

(v) Instructions for proper storage of the medication.

(vi) The telephone number and address of the child’s physician.

(B) The instructions shall be updated annually.

(3) The licensee or staff person that administers the inhaled medication to the child shall record each instance and provide a record to the minor’s parent or legal guardian on a daily basis.

(4) Beginning January 1, 2000, a licensee or staff person who obtains or renews a pediatric first aid certificate pursuant to Section 1596.866 shall complete formal training designed to provide instruction in administering inhaled medication to children with respiratory needs. This training shall include, but not be limited to, training in the general use of nebulizer equipment and inhalers, how to clean the equipment, proper storage of inhaled medication, how a child should respond to inhaled medication, what to do in cases of emergency, how to identify side effects of the medication, and when to notify a parent or legal guardian or physician. This training shall be a component in the pediatric first aid certificate requirement as provided in Section 1596.8661.

(5) For a specified child, the licensee or staff person who administers inhaled medication has been instructed to administer inhaled medication by the child’s parent or guardian.

(6) Beginning January 1, 2000, any training materials pertaining to nebulizer care that licensees or staff receive in the process of obtaining or renewing a pediatric first aid certificate pursuant to paragraph (4) shall be kept on file at the child care facility. The materials shall be made available to a licensee or staff person who administers inhaled medication. This requirement shall only apply to the extent that training materials are made available to licensees or staff who obtain or renew a pediatric first aid certificate pursuant to paragraph (4).
POLICY (Continued)

(b) For purposes of this section, inhaled medication shall refer to medication prescribed for the child to control lung-related illness, including, but not limited to, local held nebulizers.

(c) Nothing in this section shall be interpreted to require a certificated teacher who provides day care pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code in a public school setting to administer inhaled medication.

PROCEDURE

Licensing staff should ensure that applicants/licensees who wish to administer inhaled medications do the following:

1. Include plans to provide this care in the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101173. Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

2. Notify the Department and update the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101212(e)(4). Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.


   A. Check facility records to ensure all requirements of Health and Safety Code Section 1596.798 are met.

   B. The Nebulizer Care Consent/Verification – Child Care Facilities (LIC 9166) form may be used to document authorization from the child’s parent/authorized representative, as well as, verification of written instructions for administering the inhaled medication.

EpiPen Jr. and EpiPen

POLICY

Business and Professions Code Section 2058(a) provides the following emergency exception to the California Medical Practices Act: “Nothing in this chapter prohibits service in the case of emergency … .”
POLICY (Continued)

Pursuant to Business and Professions Code Section 2058, nonmedical personnel such as Child Care Center staff may administer the EpiPen Jr. Auto-Injector or the EpiPen Auto Injector as prescribed by a physician and in emergencies only.

Both the EpiPen Jr. and the EpiPen are disposable, prefilled automatic injection devices designed to deliver a single dose of epinephrine for allergic emergencies. They should only be used by, and/or administered to, a hypersensitive (allergic) person in the event of an allergic emergency as prescribed by a physician. Such emergencies may occur from insect stings or bites, foods, drugs or other allergens, as well as from idiopathic or exercise-induced anaphylaxis.

The EpiPen Jr. Auto Injector delivers a single dose of 0.15 mg epinephrine for people weighing between 33 and 66 pounds. The EpiPen delivers a single dose of 0.3 mg epinephrine for people weighing over 66 pounds.

The use of the EpiPen Jr. and the EpiPen is being permitted pursuant to Business and Professions Code Section 2058 because of its demonstrated potential to save lives when there may be only minutes to spare; and because it is premeasured and contained in an automatic injection device. The licensee must handle and administer both of these devices as specified in California Code of Regulations, Title 22, Section 101226(e). However, whenever these devices are used, the licensee must still obtain emergency medical treatment for the child as specified in California Code of Regulations, Title 22, Section 101226(c). The use of these devices is emergency supportive therapy only and is not a replacement or substitute for immediate medical or hospital care.

PROCEDURE

In addition to the requirements in California Code of Regulations, Title 22, Section 101226(e), the following apply to the use of the EpiPen Jr. or the EpiPen:

1. Use in accordance with the directions and as prescribed by a physician.
2. Keep ready for use at all times.
3. Protect from exposure to light and extreme heat.
4. Note the expiration date on the unit and replace the unit prior to that date.
5. Replace any auto-injector if the solution is discolored or contains a precipitate. (Both the EpiPen Jr. and the EpiPen have a see-through window to allow periodic examination of its contents. The physician may recommend emergency use of an auto-injector with discolored contents rather than postponing treatment.)
PROCEDURE (Continued)

6. Call 911 and the child’s parent/authorized representative immediately after administering the EpiPen Jr. or the EpiPen.

Licensing staff should ensure that applicants/licensees who wish to administer EpiPen Jr. and EpiPen do the following:

1. Include plans to provide this care in the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101173. Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

2. Notify the Department and update the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101212(e)(4). Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

3. Notify the Department as required by California Code of Regulations, Title 22, Section 101212(d)(1)(C).

Glucagon Administration

POLICY

Business and Professions Code Section 2058(a) provides the following emergency exception to the California Medical Practices Act: “Nothing in this chapter prohibits service in the case of emergency …”

Glucagon is an emergency intervention injected into a child diagnosed with diabetes in the event of a severely low blood sugar level resulting in disorientation, seizures, convulsions, or unconsciousness. Without this emergency intervention a diabetic child could sustain brain damage or die; therefore, it is important to know when this intervention is necessary.

PROCEDURE

Licensees who administer glucagon to a child in care must comply with the following conditions:

- Written permission must be obtained from the child’s parent or authorized representative.

- Child care staff administering glucagon must be trained by a competent person designated in writing by the child’s physician; verification of the training must be maintained in staff files.
PROCEDURE (Continued)

- The person designated by the physician to provide the training may be the child’s parent or authorized representative.

- At least one staff person trained to administer glucagon must be available any time a child requiring this emergency intervention is in care, including activities away from the facility.

- Child care staff administering glucagon must comply with written instructions from the child’s physician or designated person regarding how to:
  - Recognize the symptoms of hypoglycemia and take appropriate action.
  - Properly administer the glucagon.
  - Call 911 and the child’s parent or authorized representative immediately after administering the glucagon.
  - Recognize potential side effects of glucagon such as nausea and vomiting and the need to place the child on his or her side to prevent choking.
  - Review the glucagon for expiration.
  - Document the child’s file each time glucagon is administered.

Licensees who administer glucagon as a life-saving intervention to a child diagnosed with diabetes shall do the following:

1. Include plans to provide this care in the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101173. Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

2. Notify the Department and update the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101212(e)(4). Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

3. Notify the Department as required by California Code of Regulations, Title 22, Section 101212(d)(1)(C).
Gastrostomy Tube Care

POLICY

There is nothing to prohibit licensees and staff from administering routine gastrostomy-tube (G-tube) feeding, or administering routine LIQUID medication through a G-tube, to an infant or a child in care who is in stable condition if all of the requirements outlined in this policy are met.

Routine G-tube care of an infant or a child who is in stable condition is not prohibited because the Medical Board of California has determined that such care is not considered a medical procedure.

Nasogastric or Nasoenteric Tube Feeding Prohibited

However, FEEDING THROUGH A NASOGASTRIC OR NASOENTERIC TUBE IS NOT ALLOWED UNDER ANY CIRCUMSTANCES. (The nasogastric or nasoenteric tube is a long, thin, flexible feeding tube passed through the nose into the stomach or small intestine.)

Administration of Crushed Medications Prohibited

In addition, a layperson in a licensed Child Care Center is prohibited from administering CRUSHED MEDICATIONS to an infant or child through a G-tube because this procedure would increase the potential for harm to the infant or child.

Background

The G-tube is a feeding tube that is placed in the stomach surgically. It allows liquid nutrients to be delivered directly into the stomach if the infant or child is unable to eat or unable to eat enough to remain healthy. One end of the tube is in the stomach and the other end comes out through the skin of the abdomen.

The gastric feeding button is a special type of feeding device that is surgically placed into the stomach, or it may be used to replace an already existing feeding tube. The device is level with the skin. During the feeding, an adaptor is used. When the feeding is complete, the adaptor is removed and the button is again level with the skin.

Intermittent gravity feeding means that the G-tube is held above the patient and the liquid formula is put into a syringe attached to the G-tube and delivered by gravity to the stomach. This method of feeding works for most patients who have G-tubes. However, an enteral (means “into the stomach”) feeding pump can also be used to deliver formula through the G-tube to the stomach.

For more specific information on G-tube feedings, please see medical texts or related Internet websites.
PROCEDURE

1. Overall procedures
   a. When a Child Care Center accepts its first child who needs G-tube care, licensing staff must verify that all of the requirements in this policy have been met BEFORE the child receives G-tube care at the center.
   b. Thereafter, the center must notify the Department each time it accepts another child who needs G-tube care. This will enable licensing staff to keep track of how many children are receiving G-tube care in licensed Child Care Centers and to address any subsequent concerns that may arise.

2. Revised Plan of Operation
   a. In accordance with California Code of Regulations, Title 22, Section 101173(c), the licensee must do the following when the facility wishes to begin providing G-tube care:
      - Notify the Department of the facility's intent to provide G-tube care and obtain approval from the Department to provide this care; and
      - Submit a written statement to the Department of the facility’s intent to provide G-tube care to be included in the Plan of Operation.
   b. In accordance with California Code of Regulations, Title 22, Section 101173(b)(5), the written statement to be included in the Plan of Operation must include a statement on how child care staff are to be trained (see Number 3 below). Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

3. Written permission from the child’s authorized representative
   a. In accordance with California Code of Regulations, Title 22, Section 101226(e)(3)(B), the licensee must obtain written permission from the child’s authorized representative for the licensee or designated staff member(s) to:
      - Administer G-tube feeding to the child;
      - Administer liquid medication to the child through a G-tube (if the child requires such medication); and
      - Contact the child’s health care provider.
101226 HEALTH-RELATED SERVICES (Continued) 101226

PROCEDURE (Continued)

b. This documentation must include the telephone numbers (both home and work) and address of the child’s authorized representative.

c. The Gastrostomy-Tube Care Consent/Verification – Child Care Facilities (LIC 701B) form is to be used to document permission from the child’s authorized representative.

4. Instruction in G-tube feeding/administration of liquid medication by a competent person designated by the child’s physician

a. In accordance with California Code of Regulations, Title 22, Section 101216(a), the licensee must ensure that staff who administer G-tube feeding to the child are competent to do so. Staff who provide G-tube care must be at least 18 years old.

b. Therefore, for each individual child, each individual licensee or staff person who provides G-tube care to the child must be instructed on how to provide G-tube care to the child by a competent person designated by the child’s physician. Instruction in G-tube care is to include:

- How to administer G-tube feeding to the child;
- How to administer liquid medication to the child through a G-tube (if the child requires such medication); and
- Troubleshooting, including actions to take in an emergency (please see Number 6f as well).

The designated person may be the child’s authorized representative if the physician deems the authorized representative competent to provide the instruction.

c. The child’s physician must designate in writing the person authorized to provide instruction in G-tube care. Gastrostomy-Tube Care: Physician’s Checklist (Child Care Facilities) (LIC 701A) is to be used for this purpose. In accordance with California Code of Regulations, Title 22, Section 101221, this documentation must be kept in the child’s file.

d. Completion of instruction in G-tube care by the licensee and/or staff person must be verified in writing. The written verification must include the name of the instructor, date of the instruction, areas the instruction covered, and duration of the instruction (number of hours). In accordance
5. Assessment of appropriateness of G-tube care by the child’s physician

a. In accordance with California Code of Regulations, Title 22, Section 101220, the child’s medical assessment must include an assessment of whether the child’s medical condition is stable enough for a layperson in a child care setting to safely administer G-tube feeding and/or liquid medication to the child through a G-tube.

b. The assessment of the stability of the child’s medical condition is to be included on the Gastrostomy-Tube Care: Physician’s Checklist (Child Care Facilities) LIC 701A form. [This form may be used in conjunction with the Physician’s Report – Child Care Centers LIC 701 form.]

6. Written instructions from the child’s physician

The licensee or staff person who provides G-tube care must follow specific written instructions from the child’s physician or a health care provider working under the supervision of the child’s physician (for example, a physician’s assistant, nurse practitioner or registered nurse). These instructions are to be attached to the Gastrostomy-Tube Care: Physician’s Checklist (Child Care Facilities) LIC 701A form for the child.

In accordance with California Code of Regulations, Title 22, Section 101226(e)(3), the written instructions must be updated annually, or whenever the child’s needs dictate (for example, if the child obtains a different type of G-tube or if the frequency of feeding and amount/type of formula or liquid medication to be administered to the child changes). The written instructions can only be updated by the child’s physician or a health care provider working under the supervision of the child’s physician. In addition, the written instructions must include specific, explicit steps for a layperson to administer G-tube feeding or liquid medication to the child and provide related necessary care. This includes, but may not be limited to, the following:

a. Any limitations or modifications to normal activity required by the presence of the G-tube.
b. Frequency of feeding and amount/type of formula or liquid medication to be administered to the child in accordance with the physician’s prescription.

c. Hydration of the child with water or other liquids as determined by the child’s physician.

d. Method of feeding, administering liquid medication or hydrating the child, including how high the syringe is to be held during the feeding. If applicable, this includes how to use an enteral (means “into the stomach”) feeding pump.

e. Positioning of the child.

f. Potential side effects, e.g., nausea, vomiting, abdominal cramping. (Decompression - the removal of gas in the gastrointestinal tract - is not to be performed on the child beyond briefly removing the cap from the gastric feeding button. Pressing on the child’s stomach to try and remove air may harm the child and should not be done. However, the cap may be taken off the gastric feeding button for a brief time only, which may or may not help relieve gas in the child.)

g. Specific actions to be taken in the event of specific side effects or an inability to complete a feeding, administration of liquid medication to the child, or hydration of the child in accordance with the physician’s prescription. This includes actions to be taken in an emergency.

h. How and when to flush out the G-tube with water, including what to do if the G-tube becomes clogged. Specific instructions on how many cc’s of water to use when flushing out the G-tube.

i. Instructions for proper sanitation, including care and cleaning of the stoma site.

j. Instructions for proper storage of the formula or the liquid medication [California Code of Regulations, Title 22, Section 101226(e)(1)].

k. Instructions for proper care and storage of equipment.

l. The telephone number and address of the child’s physician or designee.
7. **Manufacturer’s instructions to be kept on file**

In accordance with California Code of Regulations, Title 22, Section 101226(e)(3), a copy of the G-tube manufacturer’s instructions must be kept on file at the child care facility. (Note: If there is a conflict between the physician’s instructions and the manufacturer’s instructions, the physician’s instructions should always be followed.)

8. **Record of G-tube care**

   a. In accordance with California Code of Regulations, Title 22, Section 101226(e)(5), the licensee or staff person must keep a record of each time he or she administers a G-tube feeding, liquids (hydration) or liquid medication to the child. This record must be provided to the child’s authorized representative on a daily basis and be available to licensing representatives upon request. In accordance with California Code of Regulations, Title 22, Section 101221, this documentation must be maintained in the child’s file.

9. **Summary of record requirements**

   The following is a summary of all of the items that must be on file with regard to providing G-tube care in a licensed Child Care Center:

   a. Licensee’s statement of intent to provide G-tube care, including a statement on how staff are to be trained in G-tube care. Included with the program materials (Plan of Operation) in the office file.

   b. Written permission from the child’s authorized representative for the licensee or designated staff member(s) to provide G-tube care to the child. The Gastrostomy-Tube Care Consent/Verification – Child Care Facilities (LIC 701B) form is to be used for this purpose. A separate LIC 701B must be on file for EACH person who provides G-tube care to the child. Included in the child’s file and in each respective employee’s personnel file at the facility.

   c. Physician’s written designation of person deemed competent to provide instruction in G-tube care. The Gastrostomy-Tube Care: Physician’s Checklist (Child Care Facilities) (LIC 701A) form has space for this information. Included in the child’s file at the facility.

   d. Written verification of the licensee’s or employee’s completion of instruction in G-tube care. Included in each respective employee’s personnel file at the facility.
PROCEDURE (Continued)

e. Child’s medical assessment, including the physician’s assessment of the appropriateness of providing G-tube care to the child. The Physician’s Report – Child Care Centers (LIC 701) and the Gastrostomy-Tube Care: Physician’s Checklist (Child Care Facilities) (LIC 701A) are to be used to document this information. Included in the child’s file at the facility.

f. Written instructions from the physician, with any updates attached. Should be attached to the Gastrostomy-Tube Care: Physician’s Checklist (Child Care Facilities) (LIC 701A). Included in the child’s file at the facility.

g. A copy of the G-tube manufacturer’s instructions. Included in the child’s file at the facility.

h. Record of administration of G-tube feedings, liquids (hydration) and liquid medications. Included in the child’s file at the facility.

10. Meeting the child’s needs

a. The licensee of the facility in which the care is provided must ensure that the child’s needs and the needs of the other children in care are met.

b. As appropriate, this includes ensuring that trained backup staff are available to assist the child if necessary.

c. If the child’s needs are not met, cite the licensee under California Code of Regulations, Title 22, Section 101229(a). In addition, if the Licensing Program Analyst suspects that something is wrong with the way the licensee is handling the child’s G-tube care (e.g., the equipment does not look like it is being properly cared for, the records do not look right, etc.), the Licensing Program Analyst should consult with the Licensing Program Manager to decide whether to contact the child’s authorized representative or physician regarding those concerns.

Emptying an Ileostomy Bag

POLICY

An ileostomy bag is a bag attached to the outside of the abdomen that may be emptied of feces and resealed while remaining attached to the abdomen of the child. After consultation with the California Board of Registered Nursing, it has been determined that emptying the ileostomy bag is not considered a medical procedure. It is equivalent to changing a diaper and may be done by the licensee or staff in a licensed child care facility.
Carrying Out the Medical Orders of a Child’s Physician

POLICY

Business and Professions Code Section 2727(e) provides an exception to the California Nursing Practices Act (NPA). The NPA does not prohibit:

(e) The performance by any person of such duties as required in the physical care of a patient and/or carrying out medical orders prescribed by a licensed physician; provided, such person shall not in any way assume to practice as a professional, registered, graduate or trained nurse.

The California Supreme Court concluded the medical orders exception in Business and Professions Code Section 2727(e) does permit a layperson to carry out a physician’s medical orders, for a patient, even orders that would otherwise fall within the definition of nursing practice, without violating the rule against unauthorized practice of nursing. To fall outside the exception, one must go further by holding oneself out, explicitly or implicitly, to be a nurse in fact. (See American Nurses Association et al v. Tom Torlakson et al., American Diabetes Association, Intervener and Appellant, (2013) 57 Cal.4th 570, 585).

The following may be provided by a day care center facility licensee or staff who is not a licensed medical professional, provided that it is to carry out medical orders prescribed by a licensed physician and specific safety procedures have been met:

- Insulin administration by injection or pump.
- Emergency anti-seizure medication, such as diazepam (generic for Diastat), rectal gel, as an emergency intervention for a child experiencing an epileptic seizure.
- Other incidental medical services.

PROCEDURE

A licensee or facility staff person who is not a licensed medical professional or nurse may administer insulin, emergency anti-seizure medication, or provide other incidental medical services only when carrying out medical orders as prescribed by a licensed physician and all of the following safety procedures are met:

1. Parent/Authorized Representative Written Permission
   - The licensee obtains express written consent from the child’s parent/authorized representative to permit the licensee or designated facility staff to carry out the physician’s medical orders for a specified child.
2. Physician’s Medical Orders

- The licensee has obtained from the child’s parent/authorized representative a copy of written medical orders prescribed by the child’s physician. The medical orders will include:
  
  - A description of the incidental medical service needed, including identification of any equipment and supplies needed.
  
  - A statement by the child’s licensed physician that the medical orders can be safely performed by a layperson.
  
  - Description from the child’s licensed physician of the training required of the facility licensee or staff to carry out the physician’s medical orders for a specified child and whether the training can only be provided by a licensed medical professional.
  
  - If the medical orders include the administration of medication by a designated lay person, the physician’s orders shall include the name of the medication; the proper dosage; the method of administration; the time schedules by which the medication is to be administered; and a description of any potential side effects and the expected protocol, which may include how long the child may need to be under direct observation following administration of the medication, whether the child should rest and when the child may return to normal activities.

3. Compliance

The licensee will be responsible to ensure the following:

- The facility has obtained from the parent/authorized representative of the child the medication, equipment, and supplies necessary to carry out the medical orders of the child’s physician.

- The person(s) designated to carry out the medical orders prescribed by the child’s licensed physician will not in any way assume to practice as a professional, registered, graduate or trained nurse.

- At least one of the persons designated and trained to carry out the physician’s medical orders will be onsite or present at all times when the child is in care.

- The persons designated to carry out the physician’s medical orders have completed the training indicated by the child’s physician.
The person designated to carry out the physician’s medical orders shall comply with proper safety precautions, such as wearing gloves during any procedure that involves potential exposure to blood or body fluids, performing hand hygiene immediately after removal and disposal of gloves, and disposal of used instruments in approved containers.

4. Facility Record Keeping and Notification

A licensee who carries out the medical orders of a physician for a child in their care shall do the following:

- Include plans to provide this care in the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101173. Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

- Notify the Department and update the facility’s Plan of Operation as required by California Code of Regulations, Title 22, Section 101212(e)(4). Please also see Regulation Interpretations and Procedures for Child Care Centers Section 101173, Plan of Operation.

- Maintain a written record of when the medical orders have been performed, including if medications have been administered and inform the parent/authorized representative of each occurrence when the medical orders have been carried out.

- Notify the Department as required by California Code of Regulations, Title 22, Section 101212(d)(1)(C).

- The Centrally Stored Medication and Destruction Record (LIC 622) form is available for maintaining records.

- Maintain, in the child’s file, a copy of the parent/authorized representative written authorization.

- Maintain, in the child’s file, a copy of the written medical orders of the physician.

- Maintain, in personnel files, a copy of the written verification that the designated licensee or staff have completed the training required by the physician’s medical orders.
First Aid Supplies

(d) **POLICY**

It is not necessary to secure first-aid supplies with a lock if they are stored where children cannot reach them.

Prescription Medications

(e)(3) **POLICY**

In centers where the licensee administers medications, the licensee is required to obtain written approval and instructions from a child’s parent/authorized representative prior to administering any physician-prescribed medication to a child.

In addition to obtaining written approval and instructions from the child’s parent/authorized representative to administer medication, prescription medication shall be administered in accordance with the label directions as prescribed by the child’s physician.

Nonprescription Medications

(e)(4) **POLICY**

As long as California Code of Regulations, Title 22, Section 101226(e)(4) is followed, a licensee is not required to obtain approval or instructions from the child’s physician to administer over-the-counter medication to the child.
101226.1 DAILY INSPECTION FOR ILLNESS

(b)(2)(A) POLICY

The center’s attendance/roll sheets may be modified to serve as sign-in sheets.

The use of a computer system to sign children in/out of a day care center is permitted with certain stipulations. (Please see Evaluator Manual Section 101229.1.)

101227 FOOD SERVICE

(a)(1) PROCEDURE

If it is questionable whether a center meets this requirement, document on the Facility Evaluation Report (LIC 809) what food is available and discuss with your Local Unit Manager the need for consultation from a nutritionist. If there are documented sanitation problems, discuss with your Local Unit Manager the need for consultation from a local sanitarian. See Sections 101238 and 101239.

(a)(7) PROCEDURE

Review menus, food supplies, the Child’s Pre-Admission Health History-- Parents’ Report (LIC 702) and/or the Physician’s Report--Child Care Centers (LIC 701) to ensure that the food inventory agrees with the written menu and that the menu provides for children who have medically prescribed diets.

(a)(11) POLICY

The official stamp of approval shall suffice as written evidence. The official State stamp is a “C” and a three digit number (e.g., C-123). The federal stamp is USDA.

(a)(12) PROCEDURE

If the licensee is using home-canned foods, inform him/her of the requirement to follow the safe canning procedures in the booklets and where to obtain them. If the licensee has not followed these standards, inform him/her that any unused home-canned foods cannot be served to children and that further canning must cease until the procedures outlined in the booklets are used. Document this on the LIC 809.
(a)(13) POLICY

This means that the center is purchasing from or contracting with an outside vendor to prepare meals.

PROCEDURE

If there is any question that the outside vendor meets the requirements for commercial food services, contact the local environmental health office for verification of licensure.

(a)(15) POLICY

Perishable foods spoil readily without refrigeration, drying or some other method of food preservation. Examples include, but are not limited to, milk and other dairy products; uncooked eggs, meat, fish and poultry; fresh fruits and vegetables; bread and other baked products; all prepared items; and leftovers.

PROCEDURE

If it is suspected that the temperature of a refrigerator exceeds 45 degrees F (e.g., items in refrigerator are not cold to the touch, cheese or butter is softened, food is packed too tightly, etc.), use a holding thermometer to check the temperature. In some cases, the licensee may already maintain a thermometer inside the refrigerator.

(a)(18) PROCEDURE

Check the following:

1. Cleanliness of refrigerators and freezers. Frost accumulation is one sign that a refrigerator has been inadequately cleaned.

2. Cleanliness of floors and walls.

3. Cleanliness of cabinets and counters.

4. Cleanliness of appliances (large and small).

5. Dry storage area. Check for cracks and crevices that could allow rodents to enter and for damaged screens or windows that could allow insects to enter. Look under items stored on the floor and behind food on shelves for evidence of infestation. Check for rodent and insect infestation by opening all of the resealed containers and storage bins. Food should not be stored directly on the floor.
6. Look for contamination by small bugs, worms or weevils, and for rat and mice droppings, rub marks, runways, gnowings and tracks. Rub marks and runways are caused by established rodent pathways to feeding or nesting areas. Tracks can be seen on dusty surfaces.

7. Although sanitation clearance inspections are not routinely requested on every center, if there is a serious question regarding such matters as proper food preparation and storage, sanitizing of dishes, insect control or general sanitation, discuss with your Local Unit Manager the need for such an inspection. (See Policy for Evaluator Manual Section 101238(a).)

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**PROCEDURE**

Check glasses and dishes to ensure that they are not chipped or cracked.

Check the vent fan for the stove to ensure that it works.

If you detect any gas smell when the stove and oven are not in use, this may indicate poor maintenance and the existence of a definite safety hazard.

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**PROCEDURE**

Document specific food service deficiencies prior to requiring a center to provide written information as to food purchases.

When a deficiency in food service is identified, document findings on the LIC 809 and, as necessary, on the Detail Supportive Information form (LIC 812).

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**POLICY**

It is not permissible for a teacher to be engaged in activities within the center while the children under his or her charge are being supervised by an aide on the play yard.
101229.1 SIGN IN AND SIGN OUT

(d) POLICY

Attendance/roll sheets can be used for this purpose.

In addition to sign-in/-out sheets, the use of a computer system to sign children in/out of a child care center is permitted with certain stipulations, as follows:

1. The child’s authorized representative checks the child in/out of the center with a computer card and is also required to then immediately initial or sign the computer printout sheet next to the child’s name.

OR

2. The child’s authorized representative or other responsible person authorized to sign the child in/out (including other family members) is assigned an individual Personal Identification Number. To minimize the potential for abuse, an entire family cannot be issued one Personal Identification Number--and child care center employees cannot have knowledge of or access to individual Personal Identification Numbers.

PROCEDURE

An applicant or licensee who wishes to use a computer system for sign-in/-out purposes as stipulated in either of the alternatives above shall submit to the Department a written request for a waiver as specified in Section 101175.

101230 ACTIVITIES

(b) POLICY

Children do not have to be asleep during the scheduled napping time (as indicated in the program activities statement). A child may remain awake and resting during the scheduled napping period. If a child wakes up early from a nap or becomes restless, that child may engage in a quiet activity (e.g., look at a book, draw, etc.) during naptime under the supervision of the teacher. If a child distracts or disturbs other napping/resting children and the teacher supervising the napping children needs assistance, one of the other teachers required to be immediately available at the center per Section 101330(c) shall be asked to assist with supervising the child creating the distraction or disturbance.

(b)(1) POLICY

Some cots or mats (two or three) should be available for children over the age of five who become ill or tired.
ARTICLE 7  PHYSICAL ENVIRONMENT

101237 ALTERATIONS TO EXISTING BUILDINGS OR NEW FACILITIES

(b) POLICY

A person who plans to renovate or construct a building for use as a child care center must submit plans to the Regional Office for review and approval.

101238 BUILDINGS AND GROUNDS

(a) POLICY

County health department staff are to be utilized selectively by the Department to establish the compliance of an individual center with a specific licensing requirement. For example, county health department staff may be utilized to inspect the source of the private water supply of a child care center and to provide a bacteriological analysis of a sample of the water. Likewise, a county health department evaluation of a center’s disposition of solid waste may be required to provide information relating to a potential threat to the health and safety of children from the center’s waste disposal practice. However, inspection of a center by a county health department to ascertain compliance with the California Restaurant Act or any statute other than the California Child Day Care Act are inappropriate because such statutes do not apply to child care centers.

County health departments may be utilized as a consultant or as a collateral resource to the Department only when the evaluator cannot establish a center’s compliance with the California Child Day Care Act and related regulations regarding, for example, sanitary conditions that could adversely affect children’s health and safety. In such a case, the Department evaluates county health department input in relation to licensing standards. This precludes the application of other standards to facilities by the county health department.

(e) POLICY

Pool inaccessibility does not relieve the licensee from his or her obligation to provide supervision. Both pool inaccessibility and supervision of children are required.

Pool covers embossed or labeled “F 1346-91” by the American Society for Testing Materials will support the weight of an adult. Pool domes are tent-like structures that fit over the pool for heating purposes. Domes are not designed to keep out children and are not acceptable substitutes for covers.

Fences must be in good repair and must completely surround the pool. Division 1, Appendix Chapter 4 of the 1994 Uniform Building Code, provides in pertinent part:
1. **Bottom**

The bottom of the fence shall be no more than 2 inches from the ground (four inches if the fence is on a hard surface, such as a concrete deck, or mounted on top of an above-ground pool structure).

2. **Sides**

**Separation Fence**

No door or window of the facility shall provide direct access to the pool. If a wall of the facility has doors or windows that provide direct access to the pool, a separation fence shall be provided.

**Indentations and Protrusions**

On the side away from the pool, protrusions and indentations are prohibited if they render the barrier easily climbable by children under the age of six. In particular, horizontal bars or beams on the side away from the pool shall be spaced at least 45 inches apart.

**Openings**

No opening shall permit the passage of a 1 3/4-inch (44 mm) diameter sphere (a golf ball, which has a diameter of 42.67 mm, provides a good approximation). However, for picket fences (fencing made up of vertical and horizontal members), if the tops of the horizontal beams are at least 45 inches apart, the pickets may be up to 4 inches apart.

**Thickness**

Wire used in chain-link fences must be thick enough that it cannot easily be broken, removed or stretched by children. Chicken wire, for example, is unacceptable.

Mesh fences that meet regulatory standards for pool fencing may be used provided that the licensee agrees on the LIC 809 that irrespective of whether or not children are present, the fence will remain permanently in place for the duration of the license.
(e) **PROCEDURE**

A waiver to the requirements for pool covers and fences may be granted as follows:

1. The pool is regulated by the California Department of Health Services (examples include pools situated in apartment houses, mobile home parks, auto and trailer parks, condominiums, townhouses, public or private schools, hotels, motels and homeowners’ associations) and the waiver request is supported by a copy of a current certificate of compliance with public pool regulations (24 California Code of Regulations, Part 2, State Chapter 90) issued by the local health authority. This documentation must be updated for continued approval at the next evaluation visit.

2. Apartment complexes in which the building encloses the pool area and is itself the pool barrier pose special problems. In this case, the waiver shall require either of the following for each door of the apartment that gives direct access to the pool:

   (a) Installation of an alarm on the door of the licensee’s apartment. The alarm shall meet the requirements of the 1994 edition of the Uniform Building Code, Appendix Chapter 4, Division 1, Section 421.1(5)(2). [Section 421.1(5)(2) provides that the alarm must be capable of being heard throughout the house during normal household activities. The alarm must also sound continuously for at least 10 seconds immediately after the door and its screen, if present, is opened. A switch or touch pad must be installed at least 4 1/2 feet from the floor which permits the alarm to be deactivated for a single opening of no more than 15 seconds. The alarm must automatically reset under all conditions.] Or,

   (b) Installation of self-closing and self-latching devices with the release mechanism located a minimum of 54 inches above the floor.

Where windows of the apartment give direct access to the pool, the waiver shall also require that the window be secured so that it cannot be opened more than 4 inches. For example, a clamping device may be fitted into the window track. The device shall be of a kind that cannot be removed by children, such as clamps fixed in place by screws for aluminum windows or slats nailed into the tracks of wood-framed windows.

3. The degree of protection afforded is substantially the same as that afforded by the regulations. In processing the waiver, the local building department may be selectively used as a consultant.
PROCEDURE (Continued)

The following examples of waivers are not intended to be all-inclusive:

a. When doors or windows of the facility provide direct access to the pool, and the proximity of the pool to the building does not permit the construction of a separation fence, a waiver may be granted as described in 2., above.

b. A waiver may be granted to allow reduction in the size of fence openings using wire mesh or Plexiglas meeting the above thickness standards and securely fastened to the fence.

c. A waiver may be granted to allow the use of slats fastened at the top or the bottom of a chain link fence to reduce the size of the openings.

A waiver may be granted to permit gates that are not equipped with self-latching or self-closing devices or which do not open away from the pool. These waivers shall be granted only if the licensee agrees to the following conditions: 1) The gate shall be kept locked at all times. 2) There is at least one access gate to the pool that meets the regulatory requirements. 3) This gate is used as the primary access to the pool.

OUTDOOR ACTIVITY SPACE

POLICY

Where a licensed child care program and an elementary school (public or private) share outdoor play areas, the Department’s concern and jurisdiction lie only with the children in the licensed center. As such, separation of the outdoor play areas of these programs must be maintained. Separation may be achieved through the granting of exclusive use of the outdoor area to the preschool. However, where exclusive use is not possible, a waiver is then necessary to approve alternatives. An acceptable alternative to accomplish the separation would be through scheduling or fencing. If scheduling is used to achieve separation, children from the preschool must be allowed exclusive access to the school playground during the periods scheduled for outdoor activities, and there must be age-appropriate toys and equipment available for the preschool children. The above stipulations should be conditions to the waiver.
(a)(1)(B) POLICY

See Section 101161(a) Policy for “mainstreaming” information.

(b) POLICY

In a combination child care center program, separation of programs may be achieved by means including, but not limited to, fencing, supervision and scheduling. For other safe alternatives, a waiver is then necessary for approval. Separation can be achieved without requiring a center to build a fence inside a fenced play area. It was never intended that centers incur a cost to meet this regulation.

Planned activities are time-limited activities previously identified by the licensee in the admission policies program of activities approved by the Department for mixed-age groups. Generally, this applies during the first and last hour of the day, field trips, parties, class pictures and other like activities. However, this is not a blanket approval to allow children to be in mixed-age groups at any time at the convenience of the center. Planned activities are intended to be short-term activities—not ongoing, daylong activities.

(b)(2) POLICY

Shade may be provided by trees, awnings, tables with umbrellas, etc.

Special attention must be paid to situations where children have to cross street(s) to get to the play yard.

(e)(2) POLICY

The cushioning material in California Code of Regulations Section 101238.2(e)(1) above should be of sufficient thickness to cushion a child’s fall and to prevent serious injury.

PROCEDURE

Inspect the material around and under equipment.

(g) POLICY

A waiver may be considered when local restrictions require a fence less than four feet high.

(h) POLICY

Hazards include manmade bodies of water such as canals and dams; dangerous terrain such as mineshafts, pits and quarries; and hazardous fixtures such as power lines or condemned buildings.
101238.3  INDOOR ACTIVITY SPACE  

(a)(3)

POLICY

Capacity calculations are based in part on the total usable square footage of indoor activity space. Therefore, if the center has enough total square footage for the licensed capacity, there is no regulation to limit the number of children permitted in various rooms that were included in the calculation of indoor activity space. However, if the State Fire Marshal has posted a specific occupancy limitation for a particular room, this capacity limitation must be followed.

Total usable space calculations shall include the space occupied by the teacher’s desk/table (provided this desk/table is not located in a separate office space but is in the general activity area of the center) and by the child-size sink located in the classroom. This does not include child-size sinks located in the bathroom, kitchen or any other location outside of the children’s indoor activity area. Storage shelves/“cubbies” that children have free access to during their time at the center, or that are used to store books, games, etc., or that are otherwise part of the children’s activities, shall also be counted in the usable space calculations. Storage shelves/“cubbies” used to store children’s personal items such as coats, bedding etc., shall not be counted in the usable space calculations.

See Policy in Evaluator Manual Section 101161(a) for “mainstreaming” information.

101238.4  STORAGE SPACE  

(a)

POLICY

Coats and other clothing from more than one child shall not be stored together in an individual storage space as this could create a breeding ground for lice. But it is permissible to hang coats or other clothing on hooks, pegs or hangers in the same area of a room.

(d)

POLICY

See Policy in Evaluator Manual Section 101239(c).

101239  FIXTURES, FURNITURE, EQUIPMENT, AND SUPPLIES  

(h)

POLICY

Section 101229 requires that, regardless of age, children be supervised at all times via visual observation.
(h) **POLICY** (Continued)

For example, let’s assume the center has exclusive use of the bathrooms and the bathrooms are physically located outside the children’s general activity area. When children go to the bathroom, a teacher (Section 101229) or an aide (Section 101216.2) must supervise the children.

In addition to supervision, if toilets are not for the exclusive use of children in care, the teacher or aide shall ensure that the bathroom is unoccupied and shall remain inside of or at the entrance to the bathroom while it is being used by the child. A waiver would be required if the center does not have exclusive use of the bathrooms. When a preschool is located on a school site, the child would need to be accompanied by the teacher or aide as described above who should remain in the bathroom while it is being used by the preschool child. However, it is not necessary to ensure that the bathroom is unoccupied prior to allowing use by the preschool child. The above conditions would apply to situations involving use of school bathrooms by preschool children when a preschool is located on a school site. The above stipulations should be a condition to the waiver.

Also, there is no regulatory basis for requiring bathroom facilities to be within a certain distance of the indoor activity area, nor for requiring that there be overhead protection for going to and from toilets.

(e)(3) **POLICY**

The use of antibacterial soap contained in a wall-mounted or non-stationary, unbreakable soap dispenser is permissible for handwashing purposes by both staff and children. However, the antibacterial soap supplies must be stored where inaccessible to children as provided by Section 101238(g).

(i) **POLICY**

Programs that share one large facility with separate licenses may be allowed to share a staff bathroom, i.e., one staff bathroom may be shared by several (two to three) different programs. For programs licensed on school sites, including preschools and school-age programs, the licensed program may utilize the staff bathroom located in the school office as meeting requirements under this section, provided the office is open and available for use by the licensed program during the hours the licensed program is in operation. No waiver is required to share bathrooms on school sites.
(i) **POLICY** (Continued)

In addition to sharing staff bathrooms, other common areas, such as staff break rooms, storage space, office space, food preparation areas, etc., may be shared. However, a waiver would be required to approve an alternative to the specified regulation. Additionally, each program shall ensure that staffing ratios are met at all times.

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(o)(1) **PROCEDURE**

Check the playground equipment to see that there are no bolts or rusty screws exposed.

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(q) **PROCEDURE**

Contact a local poison control center for guidance when suspicious materials are discovered.

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101239.1 **NAPPING EQUIPMENT**

(c)(4) **PROCEDURE**

Document whether the center or the children’s authorized representatives will be responsible for cleaning bedding.
SUBCHAPTER 2 – INFANT CARE CENTER

ARTICLE 6 CONTINUING REQUIREMENTS

101417 TODDLER COMPONENT IN AN INFANT CARE CENTER 101417

POLICY

Commencing January 1, 2016, a day care center serving infants with a toddler program described in this section shall extend the toddler program to serve children between 18 months and three years of age. This optional toddler program shall be subject to the following basic conditions:

• An amended application shall be submitted to and approved by the Department.
• A child younger than 18 months of age shall not be moved into the toddler program.
• A child who is older than 18 months of age shall not be required to be in the toddler program.
• Parents shall give permission for the placement of their children in the toddler program.
• A ratio of six children to one teacher shall be maintained for all children in attendance at the toddler program. An aide who is participating in on-the-job training may be substituted for a teacher when directly supervised by a fully qualified teacher.
• The maximum group size, with two teachers, or one fully qualified teacher and one aide, shall not exceed 12 toddlers.
• The toddler program shall be conducted in areas separate from those used by older or younger children. Plans to alternate use of outdoor play space may be approved to achieve separation.
• All other infant center regulations shall be complied with.

The toddler program shall be considered an extension of the infant center license, without the need for a separate license.

PROCEDURE

Until regulations implementing this section are adopted by the Department, Licensing Program Analysts are to cite the following:
PROCEDURE (Continued)

- Health and Safety Code Section 1596.956: If any of the above conditions are not met, including if a child is enrolled in a toddler component of an infant child care center and that child is less than 18 months of age or more than 36 months of age. For the purposes of this section three years of age shall be considered 36 months of age.

When conducting an inspection of a Child Care Center serving infants with a toddler component, the Licensing Program Analyst will do the following:

- Inform the licensee of the change in the statute.
- Request the licensee submit an amended application to specify the change in age.
- No fee shall be charged for this specific amendment to the application.
- Once the application is submitted and approved by the Department, the Licensing Program Analyst is to update the facility information in the Licensing Information System.
- Send a copy of the new license to the licensee.
ARTICLE 7 PHYSICAL ENVIRONMENT

101438.1 INFANT CARE GENERAL SANITATION

(b)(1) POLICY

The use of antibacterial soap is permissible as dispenser soap. See Section 101339(b)(2) for antibacterial soap policy.
SUBCHAPTER 3 – SCHOOL-AGE CHILD CARE CENTER

ARTICLE 3 APPLICATION PROCEDURES

101482 ISSUANCE OF A SCHOOL-AGE CHILD CARE CENTER LICENSE 101482
(LICENSED/EXEMPT BEFORE- AND/OR AFTER-SCHOOL PROGRAMS)

POLICY

Because it is becoming more common for licensed and exempt before- and/ or after-school programs to operate simultaneously on the same premises, several policy clarifications are being provided to address the special problems that these situations can pose.

Exempt School-Age Programs

A school-age program can be exempt for any of the following reasons:

- Exempt under Title 22, Section 101158, and Health and Safety Code Section 1596.792. (NOTE: Under Title 22, Section 101158(a)(8), and Health and Safety Code Section 1596.792(h), an extended day care program operated by a public or private school is exempt from licensure. This exemption includes an extended day care program that is operated by a public or private school at a single site and serves children from multiple schools if all of the schools are located in the same school district.)

- Exempt because it is part of an exempt pilot project established by the Legislature. The “6 to 6” program in San Diego, created by Assembly Bill 181, Chapter 851, Statutes of 1999, is an example of such a program (see Health and Safety Code Section 1596.7927). This pilot project sunsets January 1, 2002 unless legislation extending its provisions is enacted.

- Exempt because the school is the site of an exempt after-school program operated under the After-School Learning and Safe Neighborhoods Partnerships Program (see Education Code Section 8482). These programs are operated with grant money awarded by the California Department of Education to local educational agencies, or to a city, county, or nonprofit organization in partnership with, and with the approval of, a local educational agency or agencies. By law, these programs must have a 1:20 staff-to-child ratio and must not exceed 20 hours per week. (Notes: A copy of the grant award letter should be kept on file at each exempt school site. As an alternative, the school district or the local education agency may provide the Regional Office with a copy of the grant award letter and a list of the exempt school sites for the administrative file. Questions or complaints regarding one of these exempt programs should be initially referred to the school site principal for clarification of the school district’s policies regarding the After-School Learning and Safe Neighborhoods Partnerships Program.
• If issues cannot be resolved at that level, questions or complaints should be referred to California Department of Education Healthy Start and After-School Partnerships Office at (916) 657-3558, phone; or (916) 657-4611, fax).

**Twenty-First Century Program**

After-school programs funded by the federal Twenty-First Century program are not exempt just because of their funding source. These programs may or may not need to be licensed based on the configuration of the program. Evaluate these programs on a case-by-case basis.

**Allowance of Additional Children**

In addition, under Health and Safety Code Section 1596.807, an exempt or a licensed extended day care program can serve additional children who are not from the school or the school district if the following criteria are met:

a. The children are four years and nine months of age or older, and:

b. The number of additional children, including dependent children living within the same household as a child attending the school, does not exceed 15 percent of the total enrollment of the extended day care program. The enrollment of the extended day care program (including the additional 15 percent) can never exceed the enrollment during the regular school day. (Without the last provision, attendance in the extended day care program would probably jump during school holidays and become unmanageable.) Example: 400 enrolled in school, 340 must be from the school, 60 from outside (400 multiplied by 15% = 60); or 100 enrolled in the extended day care program, 85 children must be from the school, 15 from the outside (100 multiplied by 15% = 15).

**PROCEDURE**

If the licensee operates both licensed and exempt before- and/or after-school programs at the same site, the licensee must do the following:

1. Provide a clear description of the areas used for the licensed program.

2. In accordance with Title 22, Section 101173, revise the plan of operation to indicate that the licensee operates both licensed and exempt programs at the same site. Include any other related changes that affect the licensed program, such as sharing indoor activity space as specified in Evaluator Manual Section 101538.3.
PROCEDURE  (Continued)

3. In accordance with Title 22, Section 101219, clarify in the admission agreement that the licensee operates both licensed and exempt programs at the same site.

4. For the exempt program, provide specific beginning/ending dates and times during the day that the program operates.

5. Unless the exempt program falls under Title 22, Section 101158, demonstrate why the program is exempt. For example, for exempt programs operated under the After-School Learning and Safe Neighborhoods program, a copy of the grant award letter may be kept on file at each exempt site. If the licensee fails to provide proof of the program’s exempt status, make a note to that effect in the file and follow the procedures for operating over capacity.

For other information regarding licensed/exempt after-school programs operating simultaneously on a public or private school site, please see the following:

- Evaluator Manual Section 101482 (Issuance of a School-Age Child Care Center License)
- Evaluator Manual Section 101515 (School-Age Child Care Director Qualifications and Duties)
- Evaluator Manual Section 101516.5 (Teacher-Child Ratio: Flexible Ratios at Beginning/End of Day)
- Evaluator Manual Section 101516.5 (Teacher-Child Ratio: Use of a “Buddy System” for Going to the Bathroom)
- Evaluator Manual Section 101516.5 (Teacher-Child Ratio: Use of an Aide in Place of a Teacher When Children Are Being Transported)
- Evaluator Manual Section 101538.2 (Outdoor Activity Space for School-Age Children: Planned Activities)
- Evaluator Manual Section 101538.3 (Indoor Activity Space for School-Age Children: Shared Space)
- Evaluator Manual Section 101538.3 (Indoor Activity Space for School-Age Children: Program Separation)
- Evaluator Manual Section 101538.3 (Indoor Activity Space for School-Age Children: Planned Activities)
POLICY

It is the Department’s policy to foster flexibility in the use of space in school-age child care centers operated on a functioning school site. For example, sometimes school personnel ask licensed school-age programs to move into alternate space on short notice. If the Department has not already inspected the alternate space, the move may be delayed until a licensing visit can be made. To the extent possible, it is the Department’s policy to avoid such delays. This policy only applies to school-age programs operated on a functioning school site.

PROCEDURE

1. As part of the plan of operation required in Title 22, Section 101173, have the licensee/applicant identify any alternate space/rooms that the school-age program may wish to use in the future. Any capacity issues relating to current space vs. alternate space must also be addressed in the plan of operation.

2. At the pre-licensing visit, inspect and pre-approve the alternate space identified by the applicant/licensee in the plan of operation.

3. If the licensee intends to actually move into any of the pre-approved alternate space, he or she must do the following:
   a. Notify the Department immediately of the date of the move and the alternate space to be occupied by the school-age child care center.
   b. In accordance with Title 22, Section 101173(b)(7), revise the plan of operation and/or the facility sketch to indicate which alternate rooms are now to be used by the school-age child care center. Mail a copy of the revised plan of operation and/or facility sketch to the Regional Office.

4. Do not make another site visit to re-inspect the pre-approved alternate space unless the District Office determines it is necessary based on individual circumstances at the site, the facility’s compliance history, etc.

5. If the licensee intends to move into alternate space that has not been pre-approved (including portable buildings), follow normal procedures and make a licensing visit to inspect the space prior to use.
ARTICLE 6 CONTINUING REQUIREMENTS

101515 SCHOOL-AGE CHILD CARE DIRECTOR QUALIFICATIONS AND DUTIES

(b) POLICY

Where both a licensed and an exempt before-and/or after-school program operate at the same time on the same premises, it is the Department’s policy to allow the director of the licensed program to also be the director/site supervisor of the exempt program.

PROCEDURE

1. The director of the licensed program must meet the requirements of Title 22, Section 101515.

2. In accordance with Title 22, Section 101173(b)(5), the licensee must revise the plan of operation to reflect that the director of the licensed program is also serving as the director/site supervisor of the exempt program. The director’s duty statement should be revised to: a) include the new duties that the director will assume with regard to the exempt program; and b) demonstrate how the director intends to meet the duties of both the licensed and exempt programs.

3. In accordance with Title 22, Section 101215.1(f), if the director is absent, the director must leave a fully qualified teacher in charge of the licensed program. Where the director of the licensed program is also the director of the exempt program, this applies only to the licensed program—since licensing laws and regulations do not apply to exempt programs.

4. The director must be able to meet the needs of the licensed program while also working as the director/site supervisor of the exempt program.

   a. If the director is not able to meet the needs of the licensed program, cite the licensee under Title 22, Section 101216(a), for failure to meet the needs of children in care.

   b. If the Regional Office determines that the director is not able to meet the needs of the licensed program on a continuous basis, cite the licensee for failure to meet the terms of the facility’s plan of operation submitted pursuant to Title 22, Section 101173. The facility’s plan of correction must include a revised plan of operation indicating separate directors for the licensed and exempt programs.
101516.5  TEACHER-CHILD RATIO  101516.5

(a)  POLICY

Bus/van drivers who transport school-age children to and from child day care facilities are not required to meet any of the teacher education requirements. Bus/van drivers, whether employed by or contracted for the facility, are required to have a license to operate a bus/van per Section 101225 and a criminal record clearance and child abuse index check per Section 101170. Teacher-child ratio requirements go into effect when the child arrives at the center (when they are signed in per Section of 101526.1 and are signed out per Section 101529.1). If the children are on a field trip requiring bus/van transportation, staffing ratios would be enforceable on the bus/van.

PROCEDURE

Make sure that documentation regarding appropriate criminal record clearances and child abuse index checks is at the facility for each bus/van driver who transports children whether they are employed by or contracted for by the facility. Ask for facility policy regarding field trips to verify teacher-child ratios are being maintained for trips involving bus/van transportation.

(b)  POLICY

(FLEXIBLE RATIOS AT BEGINNING/END OF DAY)

A licensed school-age center may exceed the teacher-child ratios in Title 22, Section 101516.5, by 15 percent during “transition times” when children are entering and leaving the center. The following applies to transition times:

a. each transition time can be no longer than one hour (60 minutes);

b. only two transition times a day are allowed under this policy; and

c. transition times cannot be consecutive.

The purpose of this policy is to allow licensed school-age centers some flexibility in staffing ratios when children check into and out of the center and the center’s population may fluctuate slightly as a result. This means that during the designated transition times, the staffing ratio may be 1:16.

The 15 percent is calculated by multiplying 15 percent by 14 (based on the school-age teacher-child ratio of 1:14). Thus, under this policy, a school-age teacher could supervise up to 16 children during “transition times.” This policy does not in any way relieve the licensee of the responsibility to provide adequate care and supervision to children.
PROCEDURE

1. A waiver to Title 22, Section 101516.5(b) (teacher-child ratios for school-age programs), is required.

2. A licensee of a school-age center who wishes to obtain a waiver to Title 22, Section 101516.5(b), for the purposes of this policy must submit a revised plan of operation to the Department per Title 22, Section 101173(c). Documentation in the revised plan of operation must explain why the waiver is necessary and will constitute the substantiating evidence for the waiver required by Title 22, Section 101175(b)(2). Assuming the waiver request is acceptable, the Regional Office will grant the waiver when approving the plan of operation.

3. As part of the revised plan of operation, the licensee must identify the proposed hours of transition time.

4. In the admission agreement required by Title 22, Section 101219, the licensee must inform each child’s authorized representative of the center’s modified staffing ratio during transition times when children are entering and leaving the center.

(USE OF A “BUDDY SYSTEM” FOR GOING TO THE BATHROOM)

It is the Department’s policy to allow a school-age child who is in the fourth grade or above to go to the bathroom with another child who is also in the fourth grade or above without being supervised by a teacher or an aide when this can be done safely. This is known as the “buddy system.” It recognizes that school-age children in this age group go to the bathroom on their own during the regular school day. (However, a child who is in the fourth grade or above cannot escort a younger child to the bathroom; both "buddies" must be in the fourth grade or above.)

Use of the buddy system will be allowed only when an individual assessment of the circumstances indicates that it is appropriate. This policy does not in any way relieve the licensee of the responsibility to provide adequate care and supervision to children.

PROCEDURE

1. A waiver to Title 22, Section 101229(a)(1), is required if a school-age program is to allow school-age children to go to the bathroom using the buddy system. (This section states that no child shall be left without the supervision of a teacher at any time, except if an aide is being used in place of a teacher to supervise napping children or escort children to the bathroom.)
2. A licensee of a school-age center who wishes to obtain a waiver to Title 22, Section 101229(a)(1), must submit a revised plan of operation to the Department per Title 22, Section 101173(c). Documentation in the revised plan of operation must explain why the waiver is necessary and will constitute the substantiating evidence for the waiver required by Title 22, Section 101175(b)(2). If the waiver request is acceptable, the District Office will grant the waiver when approving the plan of operation. The District Office will grant or deny the waiver based on an assessment by licensing staff of the appropriateness of using the buddy system under the circumstances described by the licensee.

3. As part of the revised plan of operation, the licensee must:
   - Describe the individual circumstances of the program site and the children being served. Describe the facility’s policies and procedures that ensure proper safeguards are in place. Topics to be covered include but are not limited to:
     a. Age and gender of the children (opposite-sex “buddies” are acceptable if determined to be appropriate by the center and if approved by the District Office as part of the plan of operation).
     b. Assessment of whether it is appropriate for all of the children to participate in the “buddy system” based on such factors as the maturity level and social skills of individual children.
     c. Location of the bathrooms in relation to the rooms used for the school-age program. Are the bathrooms nearby? Or are they located in another building, away from the program site? Are the bathrooms located in or near areas unfamiliar to the children?
     d. General safety of the children, including children’s familiarity with their surroundings; whether the program will operate after dark; and whether other people have access to the premises.
   - Indicate that school-age children using the buddy system will only be permitted to use the bathrooms located closest to the school-age program.
   - Demonstrate what kind of sign-out plan the center will use to ensure that center staff know which children are gone and for how long.
PROCEDURE (Continued)

- Indicate how many pairs of children (“buddies”) will be allowed to go to the bathroom at one time. This will be determined in part by how many bathroom stalls are available. The Department recommends that no more than two pairs of children be allowed to go to the bathroom at one time.

5. If the waiver is approved, the licensee must inform each child’s authorized representative, in the admission agreement required by Title 22, Section 101219, that children who are in the fourth grade and above will be allowed to go to the bathroom on their own using the buddy system.

(b)

POLICY

(USE OF AN AIDE IN PLACE OF A TEACHER WHEN CHILDREN ARE BEING TRANSPORTED)

In a licensed school-age center, an aide who is at least 18 years old, and who meets the requirements of Title 22, Sections 101216 and 101216.2, may be used in place of a teacher to supervise children when children are being transported from one site to another for a facility function. For example, this policy would apply when children are being transported in a van or bus to a facility field trip, or when children are being picked up at school by a facility van or bus and transported to the center for after-school care. It would also apply when a group of children are walking from one facility function to another on the center or school campus premises.

The 1:14 ratio applies when aides are used in a transporting/walking capacity. Aides cannot be used in place of teachers to supervise children while children are at the site of the facility function itself.

In addition, aides who are used in this capacity must have current course completion cards in pediatric first aid and cardiopulmonary resuscitation (CPR). Under Title 22, Section 101216(f), and Health and Safety Code Section 1596.866(b), a staff member, trained in pediatric first aid and CPR must be present with the children when children are at the child care center or offsite for center activities (including en route to facility activities.)

PROCEDURE

1. A waiver to Title 22, Section 101216.2(e)(1), is required if aides are to be used in this capacity. (This section specifies that an aide can only work under the direct supervision of a teacher.)
2. A licensee of a school-age center who wishes to obtain a waiver to Title 22, Section 101216.1(e)(1), must submit a revised plan of operation to the Department per Title 22, Section 101173(c). Documentation in the revised plan of operation must explain why the waiver is necessary and will constitute the substantiating evidence for the waiver required by Title 22, Section 101175(b)(2). Assuming the waiver request is acceptable, the District Office will grant the waiver when approving the plan of operation.

3. As part of the revised plan of operation, the licensee must:

   • Identify anticipated facility functions and activities during which an aide would be used in place of a teacher to supervise children when they are being transported from one site to another for a facility function.

   • Indicate that aides who are used in this capacity will have current course completion cards in pediatric first aid and CPR.

   • Indicate how emergencies would be handled when an aide is used in place of a teacher to supervise children when they are being transported from one site to another for a facility function.

4. In the admission agreement required by Title 22, Section 101219, the licensee must inform each child’s authorized representative that the center will use aides in place of teachers to supervise children when children are being transported from one site to another for a facility function.
Where both a licensed and an exempt before and/or after-school program operate at the same time on the same premises, it is the Department’s policy to allow children in the licensed and exempt programs to be commingled for planned activities. Planned activities are joint, time-limited activities; and may take place either outdoors (or indoors; see Evaluator Manual Section 101538.3(b), Planned Activities.) Examples of planned activities include parties, baseball games, and watching a movie. This policy is not a blanket approval to allow children to be commingled at any time at the convenience of the programs. Planned activities are intended to be short-term activities—not ongoing, daylong activities.

Teacher-child ratios specified in Title 22, Section 101516.5, must be met during planned activities for children in the licensed program. Staff-child ratios paralleling those specified in Title 22, Section 101516.5, must be met during planned activities for children in the exempt program. Since children from the licensed and exempt programs will be commingled during planned activities, staff from the licensed and exempt programs will share supervisory duties and must ensure that appropriate staffing ratios are maintained at all times during planned activities.

In addition, children attending school-age programs in two geographically separate sites may be commingled for planned activities. This would be considered a field trip for children from a licensed program who travel to another site to participate in a planned activity.

Children not enrolled in either the licensed or the exempt school-age program CANNOT participate in planned activities.

**PROCEDURE**

**Square Footage/Fencing**

Determine the square-footage/fencing requirements for the shared outdoor activity space based on the following:

- **Public or private school sites.** If the shared outdoor activity space is located on a functioning public or private school site, then the site is exempt from square-footage and fencing requirements for child care centers per Title 22, Section 101538.2(c)(1) and Health and Safety Code Section 1596.806(b).

- **Other sites.** If the shared outdoor activity space is NOT located on a functioning public or private school site, then there must be 75 square feet of outdoor activity space per child [Title 22, Section 101238.2(a)]. There must also be a fence at least four feet high around the outdoor activity space [Title 22, Section 101238.2(g)].
Plan of Operation

In accordance with Title 22, Section 101173, the licensed school-age program must revise its plan of operation to:

1. Indicate that the licensed program intends to participate in planned activities with an exempt program.

2. Identify the site of the exempt program.

3. Identify the planned activities.

4. Identify the circumstances under which planned activities will take place, how often planned activities are expected to occur, and approximately how long planned activities are expected to last.

5. Indicate how the licensed and exempt programs intend to meet staffing ratios during planned activities. (See Policy above.)

6. Include any additional information as necessary.

Policy (Shared Space)

A licensed school-age program may share indoor activity space with an exempt school-age program or other group of children participating in an organized activity on the same premises. For example, a licensed program may use one end of a multi-purpose room and an exempt program or a Girl Scout troop may use the other end.

Under this policy, the following applies:

- No commingling, except as specified in Evaluator Manual Sections 101538.2(b) and 101538.3(b). These Evaluator Manual sections allow commingling of children in licensed and exempt after-school programs during “planned activities.”

- Program separation must be maintained.

- Children not enrolled in a school-age program or involved in an authorized organized activity CANNOT participate in activities taking place in the shared space.
PROCEDURE

Square Footage/Room Capacity

Determine the square-footage requirements for the shared indoor activity space based on the following:

- Public or private school sites. If the shared indoor activity space is located on a functioning public or private school site, the site is exempt from square-footage requirements for child care centers per Title 22, Section 101538.3(c)(1) and Health and Safety Code Section 1596.806(a). But the capacity per room cannot exceed the capacity for which the room is approved for use during the school day [Title 22, Section 101538.3(d)].

- Other sites. If the shared indoor activity space is NOT located on a functioning public or private school site, then there must be 35 square feet of indoor activity space per child in the licensed school-age program. [Title 22, Section 101238.3(a)]. When space is shared with the exempt program, the capacity cannot exceed the capacity for which the room(s) have been approved for fire-clearance purposes.

Shared Space/Program Separation

- A waiver is NOT required for shared space itself. However, a waiver may or may not be required for how program separation is to be maintained while space is being shared.

- A waiver is NOT required where program separation is to be achieved by use of a wall or four-foot partition as specified in Title 22, Section 101538.3(b)(1).

- A waiver to Title 22, Section 101538.3(b)(1), IS required where program separation is to be achieved through supervision and/or scheduling. In this case, see Evaluator Manual Section 101538.3(b), Program Separation (No. 2 under Procedure).
PROCEDURE (Continued)

Plan of Operation

Whether or not the licensee seeks a waiver to Title 22, Section 101538.3(b)(1), if indoor activity space is to be shared, the licensee must revise the facility’s plan of operation in accordance with Title 22, Section 101173(b). In the revised plan operation, the licensee must:

1. Indicate that the licensed school-age program intends to share indoor activity space.
2. Identify the indoor activity space to be shared.
3. Identify the group or groups of children that will share the indoor activity space.
4. Identify how the programs are to be kept separate. See Evaluator Manual Section 101538.3(b), Program Separation.
5. Specify the types of activities that will occur in the shared indoor activity space.
6. Specify the time(s) when the indoor activity space will be shared.
7. Include any additional information as necessary.

(b)

POLICY

(PROGRAM SEPARATION)

Where both a licensed and an exempt after-school program operate at the same time on the same premises, separation between the programs must be maintained. This separation may be achieved in one or a combination of the following ways:

- Physical separation as specified in Title 22, Section 101538.3(b). Physical separation is interpreted to mean a wall, or a movable wall or partition at least four feet high that is safe for use around children. In contrast, use of such items as a string of cones or garbage cans, or a curtain, to create physical separation would not be appropriate. These items may be moved by children and may even present a hazard to children.

- Separation achieved through supervision and/or scheduling.
PROCEDURE

1. If program separation is to be achieved through supervision and/or scheduling, a waiver to Title 22, Section 101538.3(b), is required. This regulation is interpreted to apply to separation between a licensed child care program and any other child care program.

2. A licensee who wishes to obtain a waiver to Title 22, Section 101538.3(b)(1), must submit a revised plan of operation to the Department per Title 22, Section 101173(c). Documentation in the revised plan of operation must explain why the waiver is necessary and will constitute the substantiating evidence for the waiver required by Title 22, Section 101175(b)(2). Assuming the waiver request is acceptable, the child care Regional Office will grant the waiver when approving the plan of operation.

3. As part of the revised plan of operation, the licensee must submit a clear description of the indoor activity areas to be used by the licensed program.

4. In the case of separation achieved through supervision, the licensee must document in the revised plan of operation how staff in the licensed program will set parameters and supervise children to ensure separation from the exempt program. For example, children from the licensed program may be using the west end of the cafeteria while children from the exempt program use the east end. How does the licensee intend to ensure that children in the licensed program stay in the west end of the cafeteria?

5. In the case of separation achieved through scheduling, the licensee must submit a written schedule that identifies the following: a) which rooms will and will not be rotated; b) time slots when the rooms will be rotated; and c) which program will occupy which room(s) during which time slot(s).

(b)

POLICY

(PLANNED ACTIVITIES)

Please see Evaluator Manual Section 101538.2(b), Outdoor Activity Space (Planned Activities), for the Department’s policy on “planned activities” for licensed and exempt after-school programs. This policy also applies to indoor activity space.