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1-0010 GENERAL STATEMENT 1-0010

The Community Care Licensing Division is a regulatory enforcement program with the principal responsibility of protecting the health and safety of children and adults in out-of-home care. Community Care Licensing Division is responsible for administering the Community Care Facilities Act, the Residential Care Facilities for the Elderly Act, Residential Care Facilities for the Chronically Ill Act, and the Child Day Care Act.

To fulfill this responsibility, the Licensing Program Analyst uses the three Community Care Licensing Division program components:

- **Prevention -** The reduction of predictable harm by screening out unqualified applicants and by providing applicants and licensed providers with information regarding the laws and regulations concerning the operation of community care facility.

- **Compliance -** The process which ensures that facilities are operated according to applicable laws and regulations. Compliance is maintained through facility inspection, issuing deficiency notices, and providing consultation regarding the correction of deficiencies

- **Enforcement -** A range of corrective actions taken when a provider fails to protect the health and safety of people in care or is unwilling or unable to maintain compliance with licensing laws and regulations.

The purpose of this section of the evaluator manual is to provide basic information of the enforcement actions available to the Department as part of the third component in the licensing process. Because of the nature of the administrative structure, enforcement is often jointly performed by the Regional Office, Statewide Program Office, audit investigation, and the Legal Division staff. As a result, it is imperative that the Licensing Program Analyst be aware of how all the segments of the program interact so that an overview is developed and a team approach is encouraged. It is also essential that the Licensing Program Analyst have a thorough understanding of his/her role and function within this team approach.

The Enforcement Action Section is designed to acquaint the Licensing Program Analyst with the range of actions available so that he/she will understand how, when, and in what circumstance, to pursue civil, criminal or administrative action. These actions are important tools to achieve compliance with the regulations and, when necessary, to take action against applicants or licensees who do not or cannot comply with the regulations.

1-0020 LICENSING RESPONSIBILITIES PERFORMED BY COUNTIES 1-0020

The California Department of Social Services has, by contract, delegated responsibility for the licensure of family child care homes and/or foster family homes to some of the counties. As a result, in many parts of the State, there may be a State Licensing Office, known as a "Regional Office," responsible for the Child Care Program, the Adult Care Program, the Children's Residential Program or the Senior Care Program as well as a county licensing office responsible for licensing family child care homes and/or foster family homes.

Where such contractual arrangements are in effect, the counties are legally the agents of the State of California, performing all the licensing activities related to family child care homes and/or foster family homes, including all required facility visits, and, when necessary, recommendations for and preparation of administrative actions. The Statewide Program Offices review county recommendations and make final decisions regarding the submission of administrative actions to the Deputy Director.

Statements which refer to a "Regional Office" (State Regional Office) are in most instances equally applicable to county licensing offices. The phrase "local Licensing Office" refers to both a State and a county Licensing Office. Where there are differences in the manner in which State and county cases should be handled they will be described separately.

The references to "Investigations Branch" are not, however, applicable to the counties. The State Department's Auditors and peace officer investigators prepare certain cases for the State Regional Offices but do not perform investigations for the counties. This is because investigative responsibilities are assumed by the counties under their contracts with California Department of Social Services. Investigations that may be needed in county cases should be conducted by county licensing staff, Child Protective Services, or local law enforcement.

Any questions about how a county case should be handled should be referred to the Statewide Program Office responsible for that county.

1-0030 GLOSSARY 1-0030

The following terms, which will be used throughout this section, have been alphabetized for easy reference.

Accusation: A formal written statement of the statutory or regulatory violations or other deficiencies upon which a request to revoke a license with or without a suspension. The Accusation, also known as a pleading, is prepared by the Legal Division of the California Department of Social Services and is based on the Statement of Facts prepared by the Licensing Program Analyst.

1-0030 GLOSSARY (Continued) **1-0030**

Adequate and Advance Notice: A term applied to the time period required for notification to family members and other responsible parties before licensing actions can become effective.

Administrative Action: A term applied to legal actions against a licensee or applicant initiated by the California Department of Social Services. License revocations, denials of initial license applications, Temporary Suspension Orders, and exclusions are examples of administrative actions. By statute, these actions are held before the Department, although an Administrative Law Judge from another department conducts the hearing. Administrative actions should be distinguished from criminal actions, initiated in Superior Court by a criminal prosecutor, usually a District Attorney. Administrative actions should also be distinguished from civil actions and from other non-criminal Superior Court cases (injunctions and restraining orders, writ proceedings, juvenile proceedings, traffic cases, etc.)

Administrative Hearing: A formal proceeding, comparable to a trial. A licensee or applicant who has been served with a pleading to revoke a license or deny an initial application may request a hearing to contest the allegations contained in the pleadings. At the hearing, a state Licensing Attorney presents witnesses and evidence to prove the allegation(s), and the licensee or applicant may elect to engage the services of an attorney or choose to present his or her explanation(s) or defense(s) and witnesses in his or her own behalf.

Administrative Law Judge: An impartial hearing officer from the State Office of Administrative Hearings who presides over the Administrative Hearing in a licensing case.

Arrest: An arrest is the detention of a person to answer a criminal charge. An arrest does not become a conviction unless adjudicated as such in a court of law. Rap sheets from the Department of Justice now provide disclosure of arrests as well as convictions.

Attorney General's Office: The Agency within the Department of Justice responsible for representing State agencies in most litigation. The Attorney General's Office assists licensing offices in obtaining injunctions and inspection warrants when the local District Attorney or county counsel declines a request from the Licensing Office for assistance in such actions.

The Attorney General's Office represents the State in lawsuits arising from licensing cases, and in any appeal proceedings that may follow a licensing hearing. The Attorney General does not generally represent State and county licensing offices in license revocation and denial hearings. That responsibility has been delegated to the licensing attorneys in the Legal Division.

Bureau of Criminal Identification Division: A bureau within Department of Justice where the fingerprints of licensees and employees are sent for processing.

1-0030 GLOSSARY (Continued) **1-0030**

Child Abuse Central Index: A Department of Justice maintained statewide, multi-jurisdictional centralized index of child abuse investigation reports. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse and/or severe neglect. Each child protection agency (police, sheriff, county welfare and probation departments) is required by law to forward to the Department of Justice a report of every child abuse incident it investigates, unless the incident is determined to be unfounded.

Child Abuse Central Index Check: A name check of the Child Abuse Central Index. This check is not fingerprint based.

Civil Penalty: A fine assessed, by the Licensing Agency, against the licensee or unlicensed operator for failure to comply with applicable laws and regulations.

Complainant: An individual, or entity, who files a complaint to the Community Care Licensing Division by telephone, mail or other means, against a licensed or unlicensed care facility or individual.

Also in an administrative action, the party filing an Accusation or Statement of Issues is known as the complainant. In licensing cases, the complainant is the Community Care Licensing Division Deputy Director.

Compliance Plan Conference: The Compliance Plan Conference develops changes to the facility plan of operation that establishes specific actions the provider will take to improve the operation of the facility. The Compliance Plan Conference does not preclude the Department from initiating administrative action if the licensee fails to implement and maintain improvements to the quality of care and supervision or fails to make other changes as reflected in the plan.

Conduct Inimical: This is a statutory basis for application denials, revocations or excluding someone from a facility because they have acted in a harmful or injurious manner, either in or out of the facility per Health and Safety Code, Section 1596.8897.

Conviction: A conviction occurs when a person pleads guilty to a criminal charge, is found guilty by a jury verdict or is found guilty by a judge following a plea of nolo contendere (no contest). For criminal record purposes, only convictions of misdemeanors or felonies, not infractions, are considered.

Criminal Action: A legal action taken against a person for violation(s) of the criminal law, normally litigated by local law enforcement agencies.

Caregiver Background Check Bureau: The bureau in the Community Care Licensing Division that reviews and renders decisions on criminal record exemption requests, active arrest reports and child abuse central index check name matches for individuals associated with State licensed facilities.

1-0030 GLOSSARY (Continued) **1-0030**

Criminal Records Exemption: Written permission by Caregiver Background Check Bureau or a county Licensing Agency permitting a person with a criminal conviction to be present in a facility licensed by the Department. An exemption is not required for arrests, infractions or child abuse index check or Child Protective Services records.

Decision and Order: The final decision of California Department of Social Services after an administrative action to revoke a license, deny an application or exclude an employee from a facility. If there has been an Administrative Hearing, the Administrative Law Judge who presided at the hearing prepares a recommendation on the case to the Director of California Department of Social Services. The Director may either adopt or reject (alternate) the Administrative Law Judge's recommendation. Regardless of whether the Proposed Decision is adopted or alternated, the Director's final decision is known as the Decision and Order.

Default: The failure of an initial applicant to file a Notice of Defense to a Statement of Issues, or the failure of a licensee to file a Notice of Defense to an Accusation, or the failure of either an applicant or licensee to appear at a hearing after filing a Notice of Defense. If the applicant or licensee does not file a Notice of Defense, or does not file a Notice of Defense in a timely manner, California Department of Social Services may issue a Decision and Order revoking a license, denying an application or excluding an employee from a facility without a hearing. If a Notice of Defense is filed, but the applicant, licensee or employee fails to appear at the hearing, the Licensing Attorney must present the evidence to the Administrative Law Judge, after which the Director of California Department of Social Services may issue the appropriate Decision and Order.

Department's Facility Closure Plan: Regional Manager and other Regional Office staff's formal closure plan for operating facilities and client relocation.

Due Process: A principle set forth in both the State and federal constitutions in the statement, "No person may be deprived of life, liberty, or happiness without due process of law." For licensing purposes, the principle of due process requires that a licensee, upon **request**, must be given a fair and impartial hearing **before** the revocation or denial of a license can become final.

Exclusion Order: An order by the Department that a person may not be present in any facility licensed by the Department. An Exclusion Order may be based upon a criminal conviction or an investigation revealing conduct inimical or a violation of licensing statutes or regulations.

Facility Closure Plan: A formal plan developed by the Regional Manager and other Regional Office staff related to the closure of operating facilities and the relocation of clients.

Facility Compliance Plan: A formal plan (documented on the LIC 9112) developed by the Licensing Program Analyst and other Regional Office staff, outlining specific actions required to resolve facility problems with the licensee.

1-0030 GLOSSARY (Continued) **1-0030**

Hearsay: Hearsay is a statement made by one person, which is related in the testimony of a different person. For example, if you testify, "My head hurts," your statement is not hearsay. But if you testify, "Tom said, 'My head hurts,'" Tom's statement is hearsay when you repeat it.

Hearsay is usually allowed in Administrative Hearings, but only to corroborate some other evidence, which is not hearsay, such as eyewitness testimony. A finding of fact cannot be based on hearsay alone.

Immediate Civil Penalty: A fine assessed at the time of citation for that day only.

Progressive Civil Penalty: Progressive civil penalties (formerly three-tier civil penalties) are assessed for a repeat violation of the same subsection within 12 months.

Informal Meeting: A meeting between licensing staff and the licensee or applicant to discuss deficiencies and an acceptable plan to bring the facility into compliance.

Injunction: A permanent order issued by a Superior Court after a hearing which prohibits some conduct or activity by a person or organization. In licensing, an injunction is usually requested by a local Licensing Office to stop a person or organization from operating a community care facility without a license.

Inspection Warrant: An order issued by a court permitting a department staff person (Licensing Program Analyst, Investigator, Auditor) to gain access to a facility or residence where unlicensed care may be provided, or to a licensed facility to which the department staff person has been refused access.

A local Licensing Office should seek assistance in obtaining an inspection warrant from the local District Attorney or county counsel or city counsel. In order to accomplish this, Regional Office staff should contact the Statewide Program Office for assistance in obtaining the warrant. If this request is rejected, an inspection warrants request should be referred to the Legal Division. These cases will be handled by the Attorney General's office.

Licensee's Facility Closure Plan: Licensee's formal closure plan for licensee's facility and client relocation.

Live Scan: An automated method of submitting fingerprint images to the Department of Justice. Live Scan technology digitally scans an individual's fingerprints and electronically submits them to the Department of Justice within minutes.

Effective July 1, 2005 Penal Code section 11077.1 mandates the Department of Justice only accept electronically transmitted fingerprint images. Each licensing Regional Office has a Live Scan vendor on site.

Non-compliance Conference: A meeting held with the licensee at the request of the Regional Manager to discuss serious noncompliance issues and the consequences for failure to correct, such as referral to the Legal Division for revocation of the facility license.

1-0030 GLOSSARY (Continued) **1-0030**

Notice of Defense: The formal notice submitted by an applicant who has been served with a Statement of Issues, or by a licensee who has been served with an Accusation, to request an Administrative Hearing in the case.

Physical Abuse: A physical injury which is inflicted by other than accidental means. Includes acts of physical abuse done at the direction of the licensee, facility employee and/or unknown suspect resulting in injuries.

Plan of Correction: A plan developed by the licensee or authorized facility representative and jointly agreed to by the Licensing Program Analyst as to how and when a deficiency(s) shall be corrected in order to bring the facility into compliance.

Respondent: In an administrative action, the party against whom the action is filed is known as the respondent. In licensing cases, the respondent is the licensee or applicant.

Revocation: The administrative action to void or rescind a license because of serious or chronic violations of licensing laws or regulations.

Ritualistic Abuse: Ritualistic abuse is a brutal form of child abuse that involves sexual, physical, psychological, and spiritual abuse and the use of frightening rituals.

Sexual Assault: Any illegal activity performed for the sexual gratification of any of the parties involved (e.g., rape, unlawful sexual intercourse, voyeurism, exhibitionism, and child molestation) including sexual contact in which one party used his or her position of trust to obtain sex (i.e. caregiver with a developmentally disabled client or teenage foster child).

Statement of Facts: A report from a Licensing Office requesting revocation of a license, denial of an application or exclusion of an employee from a facility. The Statement of Facts fully identifies a facility and its licensee, summarizes the violations with which a licensee is charged, and lists the witnesses who might testify to the violations. The Statement of Facts is always accompanied by copies of appropriate licensing reports and other documents detailing the alleged violations.

Statement of Issues: A formal written statement, or pleading, prepared by the Legal Division which sets forth the grounds upon which an initial license application has been denied by the local Licensing Office. A Statement of Issues is based on the Statement of Facts prepared by the Licensing Program Analyst.

Subsection: The subsection is the Regulation Section denoted by a small alpha after the main Regulation Section number. Example: Sections 87155(a)(2) and 87155(a)(5) are in the same subsection. Sections 87155(a) and 87155(b) are **not** in the same subsection.

Suspicious Death: Death of a client at a care facility, or while under the care of the facility, which is not clearly the result of natural causes or in which the causes are unknown.

1-0030 GLOSSARY (Continued) **1-0030**

Temporary Restraining Order: A temporary or interim order issued by a Superior Court judge prohibiting a person or organization from engaging in or continuing some activity until a hearing can be held and the dispute fully litigated. Occasionally, temporary restraining orders are sought by licensees, and issued by local Superior Court judges, to prevent Temporary Suspension Orders from going into effect. This is the only connection between a Temporary Suspension Orders and a temporary restraining order; they are otherwise unrelated legal remedies.

Temporary Suspension Order: A temporary order issued by the Deputy Director for Community Care Licensing Division which suspends a license prior to a hearing. Temporary Suspension Orders are issued, when imminent danger exists, to protect residents or clients of a facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. A Temporary Suspension Orders must be accompanied by an Accusation to revoke the license. A local Licensing Office **may not** order a licensed facility to stop operating. Only the Deputy Director for Community Care Licensing Division, or someone authorized to act in his or her stead, may issue a Temporary Suspension Orders.

Unlicensed Facility: A facility shall be deemed to be an unlicensed community care facility, Residential Care Facility for the Elderly, Residential Care Facility for the Chronically Ill or Child Care Center or Family Child Care Home if it is maintained and operated to provide nonmedical care, is not exempt from licensure and any one of the following conditions exists:

- The facility is providing care or supervision, as defined in the California Code of Regulations, Title 22, Sections 80001(c)(3) General Licensing Requirements, 82001(c)(3) Adult Day Programs, 86501(c)(3) Crisis Nurseries, 87101(c)(3) Residential Care Facilities for the Elderly, 87801(c)(3) Residential Care Facilities for the Chronically Ill, 89201(c)(3) Foster Family Homes, or 101152(c)(3) Child Care Centers.

- The facility is held out as or represented as providing care and supervision to a client, or clients not otherwise exempt from licensure.

- The facility accepts or retains residents who demonstrate the need for care and supervision whether the facility provides that care or not.

- The facility represents itself as a licensed community care facility, Residential Care Facility for the Elderly or Residential Care Facility for the Chronically Ill.

Please refer to Regulation Interpretations and Procedures for General Licensing Requirements Section 80006 and Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly Section 87106 for guidelines in determining whether an in-home supportive services arrangement should be licensed.

Facility licensure is not required where all adults in a care setting are receiving care and supervision through the In-Home Supportive Services Program.

Other arrangements of care and supervision should be assessed on a case-by-case basis.

1-0040 CIVIL PENALTIES, GENERAL STATEMENT 1-0040

The assessment of civil penalties is one method, in addition to the penalties of suspension, temporary suspension, or revocation that may be used to gain compliance from the licensee.

The purpose of civil penalties is to provide a tool for the Licensing Program Analyst to bring the licensee into compliance. This is only one of a number of tools and should be used within the entire scheme of enforcement to gain compliance. The use of a civil penalty is not intended to change any of the procedures normally used by the Licensing Program Analyst. Only after the appropriate process has been completed and the deficiencies documented, are civil penalties assessed to gain compliance.

A table is included in Section 1-0075 entitled "Quick Reference".

1-0045 VIOLATIONS RESULTING IN ASSESSMENT OF CIVIL PENALTIES 1-0045

The laws and regulations that authorize the California Department of Social Services to levy civil penalties can differ somewhat for each facility type. As a result, civil penalties may be assessed under various circumstances, depending on the type of facility and the violation cited.

However, certain violations will always result in the assessment of a civil penalty for all facility types**.** These include:

- Unlicensed operation.
- Background Check violations, which are **immediate** civil penalties.
- Violations warranting an immediate civil penalty in the amount of $150 per day. (See EM Section 1-0070 for exceptions.)

For some facilities, civil penalties may be assessed for such things as:

- Failure to meet the Plan of Correction Date, see EM section 1-0060.
- Progressive civil penalties for repeat violations, see EM section 1-0065.

For Foster Family Agencies:

- A civil penalty of $50 per day for each instance may be assessed for failure to provide the California Department of Social Services with a log of family homes certified and decertified as required.
- Note: Foster Family Agencies are cited for violations found in their Certified Family Homes. They are also assessed any applicable civil penalties. Certified Family Homes are not cited for violations or assessed penalties directly.

For all child care facilities, a civil penalty will result for:

- Failure to comply with posting requirements.

For all child care facilities, a civil penalty may be imposed for:

- Second or subsequent violation for failure to allow parent or guardian to enter and inspect facility, or for retaliation/discrimination stemming from a request to enter, or lodging a complaint.

1-0045 VIOLATIONS RESULTING IN ASSESSMENT OF CIVIL PENALTIES (Continued) 1-0045

For family child care homes only, an immediate civil penalty will be imposed for:

- Failure to give "The Parent's Rights Addendum" identifying the excluded individual to parents, or maintain a signed copy in their files, or give a copy of the "Addendum" to the California Department of Social Services.
- Failure to return signed copy of Confirmation of Removal form to licensing within five days.

Note: Licensing Program Analysts must submit their civil penalty assessment documentation to their supervisor for approval.

1-0050 UNLICENSED FACILITY OPERATION 1-0050

Civil penalties for an unlicensed facility operation apply to **ALL** CCLD facility types. When an unlicensed facility operation is identified, a Notice of Operation in Violation of Law (LIC 195) is issued. Civil penalties are assessed as described below.

- **Residential Care Facility for the Chronically Ill**

  For a Residential Care Facility for the Chronically Ill an **immediate** civil penalty of $100 is assessed per resident per day, for the first 15 days until a completed application is submitted or operation ceases. If the application is not submitted within 15 calendar days of the Notice, on day 16 the civil penalty increases to $200 per resident per day, and continues until a completed application is submitted or operation ceases.

- **Residential Care Facility for the Elderly**

  For a Residential Care Facility for the Elderly, if a completed application is submitted or operation ceases within 15 calendar days of the Notice, no civil penalty is assessed. If a completed application **is not** submitted within 15 days and operation continues, a civil penalty of $100 per resident per day, for days 1 through 15 is assessed retroactively. On day 16 the civil penalty increases to $200 per resident per day and continues until a completed application is submitted or operation ceases.

- ***All Other Facility Categories***

  For **all** other facility categories, if a completed application is not submitted or operation does not cease within 15 calendar days of the Notice, on day 16, a civil penalty of $200 per day is assessed until a completed application is submitted or operation ceases.

  Use the table in Section 1-0075 as a quick reference for timeframes and amounts for specific facility types.

1-0050 UNLICENSED FACILITY OPERATION (Continued) 1-0050

Completed Application Requirements are found in the following California Code of Regulations:

Residential Care Facilities for the Elderly; see Section 87155.

Residential Care Facilities for the Chronically Ill; see Section 87818.

Foster Family Homes; see Section 89218.

Crisis Nurseries; see Section 86518.

Other Community Care Facilities: see Section 80018.

Child Day Care Facilities;
Day Care Centers; see Section 101169.
Family Child Care Homes; see Section 102369.

1-0055 BACKGROUND CHECK VIOLATIONS 1-0055

Civil penalties for background check violations apply to **all** facility categories. Licensees will be subject to an immediate civil penalty assessment if they:

1. Allow any person subject to a criminal record check to work, reside or volunteer in their facility if the person has not:

   A. Obtained a criminal record clearance or exemption.

   Individuals who are subject to a background check shall obtain either a California clearance or a criminal record exemption from the California Department of Social Services before their initial presence (e.g., working, residing or volunteering) in the facility.

   Note: All adults residing in a Foster Family Home also require an FBI clearance provided the home was licensed after January 1, 2008. See EM Section 7-1450 for details.

   B. Submitted a written request for a transfer of a current applicable criminal record **clearance**.

   Failure to submit a written request to transfer a current applicable criminal record clearance prior to allowing a person to work, reside or volunteer in the facility shall result in the citation of a deficiency and an immediate assessment of civil penalties.

   If an individual working, residing or volunteering in the facility has a criminal record **clearance,** but the individual is associated to another facility, and the licensee has not yet submitted a transfer request, give the licensee a transfer request form (LIC 9182) and have him/her complete the form during the visit.

1-0055 BACKGROUND CHECK VIOLATIONS (Continued) **1-0055**

See EM Section 7-1100 for transfer instructions. Cite the deficiency and assess the civil penalties. See General Procedures below.

C. Received a written approval to transfer the person's criminal record exemption to the licensee's facility.

NOTE: If an individual working or residing in the facility has a criminal record **exemption,** but the individual is associated to another facility, and the licensee has not yet received confirmation that the exemption was transferred, give the licensee an exemption transfer request form (LIC 9188) and have him/her complete the form during the visit. See EM Section 7-1770 for transfer instructions. Cite the deficiency and assess civil penalties. See General Procedures below.

NOTE: Transferring a criminal record **clearance** differs from a written request to transfer a criminal record **exemption**. A clearance indicates no criminal history. However, an exemption means there is a criminal history, and despite that history an exemption was granted. The basis for the exemption may vary from one facility type to another due to the potential risk to clients. For example, an exemption despite past minor theft crimes may have been approved for child care, but would not be appropriate if client funds may be handled. Therefore, transferring an exemption request must be thoroughly reviewed and **approved** prior to transfer.

2. Have not complied with the California Department of Social Services' order to remove or exclude an individual.

For all facilities, except Community Care Facilities, a licensee's failure to comply with the California Department of Social Services' order to remove or bar a person from the facility during the exemption process shall result in a citation of deficiency and an **immediate** civil penalty in the amount of $100 per violation, per day for a maximum of 5 days, unless the violation is a second or subsequent violation within a 12-month period, in which case the civil penalties shall be in the amount of $100 per violation for a maximum of 30 days, and shall be grounds for revocation or suspension of the license.

The above civil penalties may be assessed retroactively. For example, if the LPA is at the facility on March 15th and finds that a facility employee did not have a criminal record clearance or exemption and this employee was at the facility for the last 6 days (March 10 through 15), the LPA shall assess a $100 penalty for 5 days (March 11 through 15). If this was the 2nd or subsequent violation within a 12-month period, the LPA would assess for 6 days (March 10 through 15).

NOTE: The law sets forth a separate and distinct civil penalty scheme for persons under a presently enforceable California Department of Social Services' order of exclusion, persons subject to a final order of exclusion, or persons subject to an Order of Immediate

1-0055 BACKGROUND CHECK VIOLATIONS (Continued) **1-0055**

Exclusion (these persons are lawfully excluded while a final exclusion decision is pending). These civil penalty provisions are explained in EM Section 1-0070.

General Procedures

Prior to each licensing visit, review the facility file for citations issued for allowing an individual without a criminal record clearance or exemption to work, reside, provide care or supervision, or volunteer in the facility. Query the LIS or equivalent county system for a list of all persons currently associated to the facility.

- If an individual (who is subject to a background check) is working, residing or volunteering in the facility and he/she does not have a clearance or a criminal record exemption:

  1. Determine how long the individual has been working, residing, or volunteering at the facility.

  2. Cite the deficiency. The Plan Of Correction date is immediate.

  3. Assess an **immediate** CP in the amount of $100 per violation, per day for the number of days that you can substantiate that the individual worked, resided, or volunteered for the facility without having complied up to a maximum of five days.

  4. If the violation is a second or subsequent violation within a 12-month period, assess the CP of $100 per violation for the number of days that you can substantiate the individual worked, resided, or volunteered in the facility, up to a maximum of 30 days.

Note: If the individual is a non-dependent resident, or is an employee, the licensee must immediately remove him/her from the facility. The individual cannot return to the facility until he/she receives a clearance or a criminal record exemption.

If the individual is the spouse or dependent family member of the licensee and he or she cannot be removed, initiate administrative action to revoke the license. Consult with legal staff.

Special Conditions

Non-client children who turn 18, while working or residing in the facility, have thirty (30) days from the date of his/her 18th birthday to submit fingerprints and obtain a clearance.

If a Foster Family Home or Certified Family Home is also licensed as a Family Child Care Home, anyone 18 years or older residing in the home must be fingerprinted regardless of whether he or she is receiving foster care benefits.

1-0055 BACKGROUND CHECK VIOLATIONS (Continued) **1-0055**

If the 18-year-old is working or residing in the facility and the 30-day timeframe has lapsed and he/she has not submitted his/her fingerprints or is not successful in obtaining a clearance or criminal record exemption, the licensee must be cited and immediate civil penalties must be assessed, as described above.

- If the 18-year-old is an employee or a non-dependent family member, the licensee must immediately **remove** him/her from the facility. The 18-year-old cannot return to the facility until he/she receives a clearance or a criminal record exemption.

- If the 18-year-old is a dependent family member he/she cannot be removed. Initiate administrative action to revoke the license. Consult with legal.

Individuals away on military duty who are returning to reside in a licensed facility have thirty (30) days from the date he/she returns to the facility to submit fingerprints and obtain a clearance.

If the 30-day timeframe has lapsed and the individual has not submitted his/her fingerprints or is not successful in obtaining a clearance or criminal record exemption, the licensee must be cited and immediate civil penalties, as described above, must be assessed.

- If the individual is a non-dependent resident, the licensee must immediately **remove** him/her from the facility. The individual cannot return to the facility until he/she receives a clearance or a criminal record exemption.

- If the individual is the spouse or dependent family member of the licensee he/she cannot be removed. Initiate administrative action to revoke the license. Consult with legal.

Chain Facilities within the same Regional Office. See EM Section 7-1100 for transfer instructions regarding chain facilities. In some cases you may apply the following:

- If an individual working or residing in a chain facility has a criminal record **clearance,** but the individual is not associated to the facility you are visiting, verify that the individual is associated to the licensee's designated central file facility and that the licensee has submitted the required documentation to designate one facility as the central file for clearances. If the central file for the chain facilities contains the individual's clearance, do not cite. The criminal record clearance requirement is met. Note that the central file only applies to facilities within the same regional office. If the central file does not contain the individual's clearance, cite the deficiency and assess the civil penalty in accordance with regulation and statute. Give the licensee a transfer request form (LIC 9182) to be completed during the visit.

1-0057 PARENTS RIGHTS ADDENDUM VIOLATIONS FAMILY CHILD CARE HOMES ONLY 1-0057

The following procedures will apply if the person has been excluded pursuant to Health and Safety Code Section 1596.8712 from a family child care home, by the Caregiver Background Check Bureau, the Regional Office; or the County licensing office.

- If excluded by the Caregiver Background Check Bureau: A "Family Child Care Home Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B)" will be sent from the Caregiver Background Check Bureau, to the licensee, with a copy to the Regional Office. The Regional Office is to file its copy in the public portion of the facility file, behind the "Personnel" divider. If the person is later permitted to return to the facility, the Caregiver Background Check Bureau will send the licensee a "Family Child Care Home, Addendum to Notification of Parent's Rights (LIC 995C) (Regarding Reinstatement) with a copy to the Regional Office. Again, the Regional Office must file it in the public portion of the facility file, behind the "Personnel" divider.

- If excluded by the Regional Office: A "Family Child Care Home, Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B)" will be sent from the Regional Office or the County licensing office to the licensee, with a copy placed in the public portion of the facility file behind the "Personnel" divider. If the person is later permitted to return to the facility, the Regional Office or County Licensing Office will send to the licensee a "Family Child Care Home, Addendum of Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C)." Again, the Regional Office must file it in the public portion of the facility file, behind the "Personnel" divider.

  An **immediate** civil penalty of $100 per violation must be assessed to a Family Child Care Home licensee when someone has been excluded from the facility and the licensee fails to comply with any of the following pursuant to Health and Safety Code Section 1596.8712 and Regulation Sections 102395(a)(2), (3), (4) or (5):

- Provide parents/authorized representatives with a copy of the addendum;
- Obtain parents/authorized representatives signature or;
- Provide the California Department of Social Services with a copy of the signed addendum upon request.

Civil penalties are based upon parents/authorized representatives not receiving a copy of the addendum (e.g., if the parents/authorized representatives of four children did not receive notification from the licensee and three of the four children had the same parents/authorized representatives, the licensee would only be assessed a civil penalty of $200.) If a licensee refuses to permit the Licensing Program Analyst to see proof of receipts of the Parent's Rights Addendum, cite $100 penalty for each set of parents whose children are present on the day of the visit.

NOTE: Refer to EM Section 1-0070 for additional civil penalties applicable to the presence of an excluded person violation.

1-0060 CIVIL PENALTIES ASSESSED FOR FAILURE TO MEET PLAN OF CORRECTION DUE DATE 1-0060

Note: This section does not apply to violations referenced in EM sections 1-0050, 1-0055, 1-0065 and 1-0070.

Each time a citation is issued, a Plan of Correction Due Date is established. The California Department of Social Services shall set a reasonable time for compliance by the facility. A follow-up visit is conducted to verify corrections within ten working days following the Plan of Correction Due Date unless other approved means are used to clear the deficiencies. Under existing regulations the following applies for RCFCIs, RCFEs, and all community care facilities, except Foster Family Homes.

> If deficiencies are not **corrected** by the date specified in the notice of deficiency, a civil penalty of $50 per day, per cited violation is assessed beginning on the day after the Plan of Correction Due Date, up to a maximum of $150 per day.

Note: If the follow-up visit is **not** conducted within ten working days following the Plan of Correction Due Date, a civil penalty **cannot** be assessed. If the deficiency has not been corrected, issue a new citation and establish a new Plan of Correction Due Date. An immediate civil penalty cannot be assessed for this new citation at the time it is issued. This new citation will be counted as the first deficiency in the progressive civil penalty process.

Foster Family Agencies

The Foster Family Agency will be given a Plan of Correction and will have a reasonable length of time for compliance. If the deficiency(ies) is not corrected by the Plan of Correction Due Date, a civil penalty of $50 per day, per cited violation will be assessed up to a maximum of $150 per day.

During the course of an annual inspection of a Foster Family Agency, citations of the same subsection at more than one certified home generally do not constitute a repeat citation for purposes of assessing immediate civil penalties. Refer to EM Section 1-0065, Civil Penalties for Repeat Violations for further clarification.

Child Day Care Facilities

Day Care Center

Under existing regulation, Section 101195, if serious deficiencies are not corrected by the date specified in the notice of deficiency, a civil penalty of $50 per day, per violation is assessed beginning on the day after the Plan of Correction Due Date, up to a maximum of $150 per day.

1-0060 CIVIL PENALTIES ASSESSED FOR FAILURE TO MEET PLAN OF CORRECTION DUE DATE (Continued) 1-0060

Family Child Care Homes
A civil penalty of $50.00 per day will be assessed if a deficiency within Section 102419 (a)(8), (b), (c), (d), (d)(1), or (d)(2) is not corrected by the Plan of Correction Due Date. The civil penalty continues until the deficiency is corrected.

1-0065 CIVIL PENALTIES FOR REPEAT VIOLATIONS 1-0065

The California Department of Social Services is required to notify all licensed facilities in writing of any deficiencies and shall set a reasonable time for compliance by the facility.

Procedures for All Categories (except Family Child Care Homes)

Notwithstanding this requirement, any Residential Care Facility for the Elderly, Residential Care Facility for the Chronically Ill, Community Care Facility or Child Care Center that is cited for repeating the same violation, of the same subsection of this chapter within 12 months of the first violation, an immediate civil penalty is assessed and a penalty is also assessed for each day the violation continues until the deficiency is corrected. The amount of the immediate civil penalty assessed and the civil penalty assessed for each day the violation continues varies by facility type (See below). More than one civil penalty may be in effect at one time.

Note: Foster Family Homes are not subject to the procedures and civil penalty amounts described in this section. Foster Family Homes are subject to civil penalties described in EM Section 1-0050, Unlicensed Facility Operation, EM Section 1-0055, Background Check Violations (including progressive penalties for Background Check Violations which are mandated separately in Statute) and EM Section 1-0070, Violations Warranting an Immediate Civil Penalty Assessment of $150 per Day per Violation.

Violations described in EM Section 1-0070, Violations Warranting an Immediate Civil Penalty Assessment of $150 per Day per Violation, that are repeated within a 12-month period will be subject to the progressive penalty described in this section when such assessment would result in a higher penalty, otherwise the $150 per violation, per day will apply. Refer to Sections 1-0070 and 1-0075 for more clarification.

1. **Second Cited Violation within 12 Months (except for Child Care Centers and Family Child Care Homes)**

   For the same cited violation of the same subsection within 12 months, assess an immediate civil penalty of $150 per cited violation for that day. If the deficiency is not corrected, the following day a civil penalty of $50 per day per cited violation begins and accrues until corrected.

   - **Child Care Centers**

     Health and Safety Code Section 1596.99 was amended to provide that any child care center that is cited for repeating the same violation within 12 months of the first violation is subject to an immediate civil penalty of $150 for each day the violation continues until the deficiency is corrected.

1-0065 CIVIL PENALTIES FOR REPEAT VIOLATIONS (Continued) **1-0065**

2. **Third or Subsequent Cited Violation within 12 Months of the Last Citation (except Family Child Care Homes)**

- **Residential Care Facilities for the Elderly/Residential Care Facilities for the Chronically Ill**

  For the third cited violation and/or subsequent cited violations of the same subsection within 12 months of the last cited violation, assess an immediate civil penalty of $1,000 per cited violation for that day. If the deficiency is not corrected, the following day a civil penalty of $100 per day per cited violation begins and accrues until corrected.

- **Community Care Facilities/ Child Care Centers**

  For the third cited violation and/or subsequent cited violations of the same subsection within 12 months of the last cited violation, assess an immediate civil penalty of $150 per cited violation for that day. If the deficiency is not corrected, the following day a civil penalty of $150 per day per cited violation begins and accrues until corrected.

- **Foster Family Agencies**

  The progressive civil penalty process for Foster Family Agencies is generally the same as for Community Care Facilities. If a Foster Family Agency receives a citation for a repeat violation of the same subsection in a 12-month period for deficiencies observed at the same Certified Family Home, an immediate civil penalty will be assessed per the instructions for Community Care Facilities above. If a Foster Family Agency receives a citation for a repeat violation of the same subsection within a 12-month period for a deficiency observed during the agency office visit portion of the evaluation, an immediate civil penalty will also be assessed per the instructions for Community Care Facilities above.

  However, if a Foster Family Agency receives a citation for a repeat violation of the same subsection in a 12-month period for a deficiency observed at different Certified Family Homes, an immediate civil penalty will generally not be assessed, even though all of the citations will be issued against the Foster Family Agency. In these situations, the Plan of Correction must include a requirement that the Foster Family Agency take steps to ensure compliance with the cited deficiencies at all of its Certified Family Homes. For example, the Licensing Program Analyst finds one Certified Family Home with an unfenced swimming pool. As a part of the Plan of Correction, the Licensing Program Analyst requires the Foster Family Agency to check all its Certified Family Homes for swimming pool fencing. In addition, the Licensing Program Analyst notifies the Foster

1-0065 CIVIL PENALTIES FOR REPEAT VIOLATIONS (Continued) **1-0065**

Family Agency that failure to correct the deficiency will result in the assessment of a progressive (repeat) penalty. If within 12 months, the Licensing Program Analyst cites another one of the Foster Family Agency's Certified Family Homes for a violation of the same subsection, the Foster Family Agency is assessed an immediate Civil Penalty. Civil Penalties will continue to be assessed against the Foster Family Agency until the deficiency is corrected.

Procedures for Family Child Care Homes

The following procedures apply to family child care homes cited for violating Title 22, Section 102419 – Admission Procedures and Parental and Authorized Representative's Rights

Regulation Section 102419(d)(2)(A) provides that upon a finding of noncompliance with a plan of correction for violations of Sections 102419(a)(8), (b),(c), (d), (d)(1), or (d)(2), the California Department of Social Services shall impose a civil penalty of $50 per day until the deficiency is corrected.

1. Second Cited Violation within 12 Months

   Regardless of whether the licensee complies with the initial plan of correction, if the licensee subsequently violates any provision of Sections 102419(a)(8), (b), (c), (d), (d)(1), or (d)(2) within 12 months of the initial citation, the California Department of Social Services shall assess a civil penalty of $150 plus an assessment of $50 per day until the deficiency is corrected.

2. Third Cited Violation and/or subsequent cited violations within 12 Months of the Last Citation

   Regardless of whether the licensee complies with the previous Plan of Correction for the deficiency in Section 102419(b)(3)(B), if the licensee subsequently violates any provision of Sections 102419(a)(8), (b), (c), (d), (d)(1), or (d)(2) within 12 months of the citation and assessment in Section 102419(b)(3)(B), the California Department of Social Services shall assess a civil penalty of $150 plus an assessment of $150 per day until the deficiency is corrected.

1-0070 VIOLATIONS WARRANTING AN IMMEDIATE CIVIL PENALTY ASSESSMENT OF $150 PER DAY PER VIOLATION 1-0070

For any of the following serious violations, the immediate civil penalty shall be $150 per day, per violation:

- fire clearance violations (except for Family Child Care Homes)
  See below for assessment exceptions;
- absence of supervision;
  See below for policy on "absence of supervision";
- accessible bodies of water;
- accessible firearms, ammunition, or both;
- refused entry of authorized licensing staff to a facility or any part of a facility;
- presence of an excluded person on the premises;
- violations that result in the illness, injury, or death of a client (of either statute or regulation).(Except for Residential Care Facilities for the Chronically Ill or Foster Family Homes)

When a Licensing Program Analyst cites for any of the above violations:

- An immediate civil penalty of $150 shall be assessed. An ongoing civil penalty of $150 per day per violation continues until the violation is corrected. Any citation or penalty assessment mandated by statute cannot be waived.
- The licensing report shall specify that, if not corrected, the violation will have a direct and immediate risk to the health, safety, or personal rights of clients in care.
- The licensing report shall document, in the narrative of the citation, that notice of the civil penalty assessment was given.

In some cases, the violation may have been corrected by the time the Licensing Program Analyst is completing the LIC 809 (or LIC 9099) during the facility visit, in which case the Plan of Correction is cleared and a one day civil penalty is assessed.

Violations in this category that are repeated within a 12-month period will be subject to the repeat violation penalty when such assessment would result in a higher penalty, otherwise the $150 per violation, per day will apply. Refer to EM Sections 1-0065 and 1-0075 for more clarification.

THE FOLLOWING APPLY TO ALL FACILITIES:

Accessible Bodies of Water:

An immediate civil penalty shall be assessed if verified that the facility has bodies of water (e.g., swimming pools, spas, ponds, or similar items) that are not made inaccessible in accordance with statute and/or regulations.

- Pools and spas shall be made inaccessible to foster children as specified in regulation regardless of the prudent parent standard. Foster Family Homes and Group Homes may allow a foster child access to fish ponds, fountains, creeks, or similar bodies of water,

1-0070 VIOLATIONS WARRANTING AN IMMEDIATE CIVIL PENALTY ASSESSMENT OF $150 PER DAY PER VIOLATION (continued) **1-0070**

provided that the prudent parent standard is applied as specified in Title 22 regulation sections 89377 or 84067, respectively. An immediate civil penalty shall be assessed if it is verified that fish ponds, fountains, creeks or similar bodies of water are not made inaccessible to foster children and the prudent parent standard is not applied as specified in Title 22 regulation sections 89377 or 84067, respectively.

Accessible Firearms, Ammunition or Both:

An immediate civil penalty shall be assessed if verified that the facility has firearms, ammunition or both, and one or more are **accessible** in accordance with regulations.

Refused Entry Of Authorized Licensing Staff To A Facility or Any Part Of A Facility:

An immediate civil penalty shall be assessed if verified that the facility has refused entry of authorized licensing staff to a facility or any part of a facility.

Presence of an Excluded Person on the Premises:

The term "excluded person" should be interpreted to include any individual under a presently enforceable California Department of Social Services order of exclusion. To prove this violation, the California Department of Social Services must show that it complied with the exclusion notice requirements of Health and Safety Code Section 1558, 1568.092, 1569.58 or 1596.8897 by informing the licensee of the exclusion; the Department would issue and serve an order of exclusion upon the individual and the licensee. The term "excluded person" should be interpreted to include:

- Any person under a presently enforceable California Department of Social Services order of exclusion.
- Any person subject to a final order of exclusion.
- Any person subject to an Order of Immediate Exclusion (these persons are lawfully excluded while a final exclusion decision is pending).

It does not include:

- A person subject to a non-immediate exclusion action which does not yet prohibit presence.
- A person who has yet to submit to a background check (even if they are unlawfully working or residing in a facility without a clearance or exemption.)
- A person subject to a Caregiver Background Check Bureau order to terminate, remove, or bar pending a criminal record exemption decision.
- A person who has been notified by the Caregiver Background Check Bureau that they cannot be at the facility due to a non-exemptible crime.

The law sets forth a separate and distinct civil penalty scheme for a licensee's failure to have a person cleared, exempted or transferred prior to presence, or failure to comply with a Caregiver

1-0070 VIOLATIONS WARRANTING AN IMMEDIATE CIVIL PENALTY ASSESSMENT OF $150 PER DAY PER VIOLATION (continued) **1-0070**

Background Check Bureau removal order. These civil penalty provisions are found in the background check statutes and regulations.

Caution is advised as exclusion orders must be presently enforceable at the time of the alleged violation. Some orders are for a limited duration or may be vacated prior to reaching a final decision. Other orders may contain conditions which allow some level of presence and/or contact. If necessary, a legal representative should be consulted.

Violations That Result In the Illness, Injury, or Death of a Client (except for Residential Care Facilities for the Chronically Ill or Foster Family Homes):

An immediate civil penalty shall be assessed if verified that as a result of a **violation** a client became ill, injured, or died.

FOR ALL CATEGORIES EXCEPT FAMILY CHILD CARE HOMES:

Fire clearance violations:

All categories except family child care homes are subject to an immediate civil penalty of $150.00 per day until the violation is corrected under these circumstances:

- Failure to maintain the conditions of the fire clearance, including but not limited to:
  - Overcapacity (when it offends the fire clearance)
  - Inoperable smoke alarms
  - Inoperable fire alarms

The Licensing Program Analyst should obtain a copy of the fire clearance (STD 850) at the time of the file review and prior to a facility visit. This step will provide the Licensing Program Analyst with conditions that are to be maintained by the licensee. If the licensee is operating outside of those conditions there will likely be a fire clearance violation. The following questions may be helpful in determining if a civil penalty is warranted:

- Is the client census greater than what is approved by the fire clearance (STD 850)?
- Does the ambulatory status of any client exceed the limitations of the approved fire clearance?
- Are all facility fire alarm systems or smoke alarms operable? If you have any questions, did you contact the fire authority having jurisdiction?
- If there is a protective separation room in the home/facility, is the room approved by the fire authority having jurisdiction?

At times the Licensing Program Analyst may have difficulty determining whether or not a fire clearance

1-0070 VIOLATIONS WARRANTING AN IMMEDIATE CIVIL PENALTY ASSESSMENT OF $150 PER DAY PER VIOLATION (continued) **1-0070**

violation has occurred. When conditions pose a potential hazard but the Licensing Program Analyst cannot clearly determine a fire clearance violation exists, the Licensing Program Analyst may consult with the fire authority having jurisdiction.

Fire clearance violations For Residential Facilities only (assessment exceptions)

The licensee shall be cited for fire clearance violations. However, the civil penalty shall not be assessed if the licensee has done either of the following:

- Requested the appropriate fire clearance based on ambulatory, non-ambulatory, or bedridden status prior to the Licensing Program Analyst's visit, and the decision is pending (if necessary, the Licensing Program Analyst shall verify whether or not the fire clearance has been requested.); or

- Initiated eviction proceedings prior to the Licensing Program Analyst's visit.

A licensee denied a clearance for bedridden residents shall be cited, but may appeal to the fire authority, and, if that appeal is denied, may subsequently appeal to the Office of the State Fire Marshal, and shall not be assessed an immediate civil penalty until after the final appeal to the State Fire Marshal is decided, or after 60 days has passed from the date of the citation, whichever is earlier.

When a Licensing Program Analyst cites and assesses an immediate civil penalty for a licensee not having a proper fire clearance for a bedridden client, the licensee shall be cited for an immediate civil penalty and assessed $150 per day, per violation. The civil penalty shall be assessed until the licensee either:

- Initiates eviction proceedings, or
- Requests the appropriate fire clearance based on ambulatory, non-ambulatory, or bedridden status, and the decision is pending.

Licensees denied a clearance for bedridden residents may appeal to the fire authority and if that appeal is denied, may subsequently appeal to the Office of the State Fire Marshal. The Licensing Program Analyst shall not assess an immediate civil penalty until the final appeal is decided or after 60 days has passed from the date of the citation, whichever is earlier.

Absence of Supervision (except Child Care Facilities):

Whenever the Licensing Program Analyst cites for "absence of supervision," the citation shall indicate that the licensee was cited "due to absence of supervision." The following question may be helpful in determining if a civil penalty is warranted:

- Was there an absence of supervision that placed the health and safety of clients at risk?

1-0070 VIOLATIONS WARRANTING AN IMMEDIATE CIVIL PENALTY ASSESSMENT OF $150 PER DAY PER VIOLATION (continued) **1-0070**

CHILD CARE FACILITIES ONLY:

Absence of Supervision:

An immediate civil penalty shall be assessed until the violation is corrected under any of these circumstances:

- A child is left unattended;
- A child is left alone with a person under 18 years of age;
- A child wandered away due to a lack of supervision

1-0072 ADDITIONAL CIVIL PENALTY ASSESSMENTS 1-0072

CHILD CARE FACILITIES

FAILURE TO RETURN CONFIRMATION OF REMOVAL FORM – FAMILY CHILD CARE HOMES ONLY

The licensee must return a confirmation of removal form, sent by the California Department of Social Services, within five days of the date of the form that confirms under penalty of perjury that the individual has been removed from the facility. The California Department of Social Services shall assess a civil penalty of $50 per day for failure of the licensee to comply with the requirement to return the confirmation of removal form within five days.

Note: Refer to EM Section 1-0070, if it is verified that an excluded person is present on the premises of the family child care home.

FOR SUBSEQUENT VIOLATION OF PARENT'S RIGHTS TO ENTER AND INSPECT ANY CHILD CARE FACILITY OR RETALIATION

No child care facility shall discriminate or retaliate against any child or any child's parent or authorized representative because the parent or authorized representative has exercised his or her right to inspect the child care facility or has lodged a complaint with the California Department of Social Services against the child care facility.

If any child care facility denies a parent or authorized representative the right to enter and inspect a facility, or retaliates against any child or child's parent or authorized representative, the department shall issue the facility a warning citation.

For any **subsequent** violation of this right, the California Department of Social Services shall take appropriate action including (but not limited to), license

1-0072 ADDITIONAL CIVIL PENALTY ASSESSMENTS (Continued) **1-0072**

revocation and imposition of a civil penalty upon the home of $50 per violation. (See Health and Safety Code Section 1596.857(c) and Title 22 Regulation Section 102419(f).)

POSTING SITE VISIT REPORT NOTICE

The California Department of Social Services' written notice of a site visit to a licensed child care facility shall remain posted for 30 consecutive days, except that a family child care home shall comply with the posting requirements only during hours when children are present.

Failure by a licensed child care facility (center or home) to comply with this posting shall result in an **immediat**e civil penalty of **$100.** [See Health and Safety Code Section 1596.817(b)]

POSTING LICENSING REPORT OF FACILITY VISIT OR COMPLAINT INVESTIGATION THAT RESULTS IN A TYPE A VIOLATION

Each licensed child care facility shall post a copy of any licensing report pertaining to the facility that documents either a facility visit or a complaint investigation that results in a citation for a violation that, if not corrected, will create a direct and immediate risk to the health, safety, or personal rights of children in care. The licensing report shall be posted immediately upon receipt, adjacent to the site visit postings required pursuant to Section 1596.817 (see above) and on, or immediately adjacent to, the interior side of the main door to the facility and shall remain posted for 30 consecutive days.

A family child care home shall comply with the posting requirements during the hours when children are present.

Failure to comply shall result in an **immediate** civil penalty of **$100**.
(See Health and Safety Code Section 1596.8595(a)(3).)

POSTING REPORTS VERIFYING COMPLIANCE OR NONCOMPLIANCE

The child day care facility licensee shall post a licensing report or other appropriate documents verifying the licensee's compliance or noncompliance with the California Department of Social Services' order to correct a deficiency if the citation was issued for a violation that, if not corrected, will create a direct and immediate risk to the health, safety, or personal rights of children in care. The licensing report or other document shall be posted immediately upon receipt, adjacent to the site visit postings required pursuant to Section 1596.817, on, or immediately adjacent to, the interior side of the main door into the facility and shall be posted for 30 consecutive days.

1-0072 ADDITIONAL CIVIL PENALTY ASSESSMENTS 1-0072

A family child care home shall comply with the posting requirements during hours when children are present.

Failure to comply shall result in an **immediate** civil penalty of $100.
(See Health and Safety Code Section 1596.8595(b)(3).)

1-0075 QUICK REFERENCE – CIVIL PENALTIES 1-0075

TABLE 1: FAILURE TO MEET POC OR REPEAT VIOLATIONS

	Failure to Meet POC Date For Deficiencies[3] **(Use LIC 421)**	**Civil Penalties for Repeat Violations** **(Use LIC 421)**	
Type of Facility	First cited violation if not corrected	Second cited violation within 12 months of the last violation[3]	Third or subsequent cited violation within 12 months of the last violation
Residential Care Facility for the Elderly	$50 per violation per day	$150 immediate[1] per violation then $50 per violation per day until corrected	$1,000 immediate[1] per violation then $100 per violation per day until corrected[4, 5]
Residential Care Facility for the Chronically Ill	$50 per violation per day	$150 immediate[1] per violation then $50 per violation per day until corrected	For serious violations, $1,000 immediate[1] per violation then $100 per violation per day until corrected. For non-serious violations, $150 immediate per violation then $50 per violation per day until corrected.[4, 5]
Community Care Facility Including Foster Family Agency[2] Excluding Foster Family Homes	$50 per violation per day	$150 immediate[1] per violation then $50 per violation per day until corrected	$150 immediate[1] per violation then $150 per violation per day until corrected.[3]
Child Care Centers	$50 per violation per day	$150 immediate[1] per violation then $150 per violation per day until corrected	$150 immediate[1] per violation then $150 per violation per day until corrected.[3]
Family Child Care Home	$50 per violation of Section 102419 (a)(8), (b), (c), (d), (d)(1), or (d)(2) per day until corrected.	$150 immediate[1] per violation then $50 per day per violation of Section 102419 (a)(8), (b), (c), (d), (d)(1), or (d)(2) until corrected	$150 immediate[1] per violation then $150 per day per violation of Section 102419 (a)(8), (b), (c), (d), (d)(1), or (d)(2) until corrected.[3]

[1] The immediate penalty is assessed on the day the second deficiency is cited within 12 months (for one day only); daily penalty begins the day after this immediate civil penalty assessment and continues until the deficiency is corrected. **There is no daily maximum.**

[2] FFAs are cited for violations found in Certified Family Homes (CFHs). FFAs are not assessed penalties for repeat violations found in different CFHs, unless special criteria are met (see EM 1-0060, 1-0065).

[3] The penalties in this column **do not apply** to the following violations: Background Check, Unlicensed Operation or the violations listed in EM 1-0070.

[4] Does not apply to Background Check or Unlicensed Operation.

[5] Do not assess the $150 immediate civil penalty for serious violations listed in Table 2.

1-0075 **QUICK REFERENCE – CIVIL PENALTIES** (continued) **1-0075**

TABLE 2: IMMEDIATE ASSESSMENT FOR SERIOUS VIOLATIONS LISTED IN EM 1-0070

Type of Facility	**Sickness, Injury, or Death as a Result of Deficiency** (Use LIC 421C)	**Fire clearance violations** (Use LIC 421C)	**Absence of supervision** (Use LIC 421C)	**Accessible Bodies of Water** (Use LIC 421C)	**Accessible Firearms or Ammunition** (Use LIC 421C)	**Refusing CCL's Entry to a Facility** (Use LIC 421C)	**Presence of Excluded Person at Facility** (Use LIC 421C)
Residential Care Facility for the Elderly[1]	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected
Residential Care Facility for the Chronically Ill[1]	N/A	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected
Community Care Facility[2] Including Foster Family Agency, Excluding Certified Family Homes[3]	$150 per violation per day until corrected (excludes Foster Family Homes)	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected
Child Care Centers[2]	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected
Family Child Care[2] Homes	$150 per violation per day until corrected	N/A	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected	$150 per violation per day until corrected

1. The civil penalties on this chart apply if it is the initial or 1st repeat violation. If it is the 2nd repeat or subsequent repeat violation, use Table 1.
2. For these facilities, apply the civil penalties on this table; do not assess the repeat violation civil penalties found on Table 1.
3. Foster Family Agencies are cited for violations and assessed for penalties found in their Certified Family Homes (CFHs).

1-0075 **QUICK REFERENCE – CIVIL PENALTIES** (continued) **1-0075**

TABLE 3: UNLICENSED FACILITY

Type of Facility	**Unlicensed Facility Operation** **(Use LIC 421A)**
Residential Care Facility for the Elderly	Facility has 15 days after the notice of violation, to submit a completed application. When a completed application has not been submitted, after the 15th day: • Assess penalty of $100 per day per resident retroactively for the first 16 days. • Assess a penalty of $200 per day per resident for each day of violation after the 1st 16 days, until a completed application is submitted or operation ceases.
Residential Care Facility for the Chronically Ill	Immediate penalty of $100 per day per resident, through the 15th day after the notice of violation, until a completed application is submitted or operation ceases. When a completed application has not been submitted, after the 15th day: • Assess a penalty of $200 per day per resident until a completed application is submitted or operation ceases.
Community Care Facility	Facility has 15 days after the notice of violation to submit a completed application. When a completed application has not been submitted, after the 15th day: • Assess a penalty of $200 per day until a completed application is submitted or operation ceases.
Child Care Facilities	Facility has 15 days after the issuance of the Notice of Violation in Violation of Law to submit a complete application. When a completed application has not been submitted, after the 15th day: • Assess a penalty of $200 per day until a completed application is submitted or operation ceases.

1-0075 **QUICK REFERENCE – CIVIL PENALTIES** (continued) **1-0075**

TABLE 4: BACKGROUND CHECK VIOLATIONS

Type of Facility	**Background Check Violations[1]** **(Use LIC 421B)** • Failure to obtain background check clearance or exemption prior to presence in the facility (not including an excluded person on the premises [see section 1-0070]) • Failure to submit a transfer of background check clearance • Failure to obtain approval of an exemption transfer prior to presence in the facility • Failure to comply with confirmation of removal requirements (Applies to all facility types except for Community Care Facilities.)
All Residential Care Facilities **Including Foster Family Agencies, Excluding Certified Family Homes[2]**	$100 immediate per person per day up to 5 days; $100 immediate per person per day up to 30 days for 2nd or subsequent violation within 12 months
Child Care Facilities	$100 immediate per person per day up to 5 days; $100 immediate per person per day up to 30 days for 2nd or subsequent violation within 12 months

1. Civil Penalties in this chart do not apply to an excluded person on the premises. See section 1-0070 for excluded person civil penalties.
2. Foster Family Agencies are cited for violations and assessed for penalties found in their Certified Family Homes (CFHs).

1-0075 QUICK REFERENCE – CIVIL PENALTIES (continued) **1-0075**

TABLE 5: CIVIL PENALTIES FOR SPECIFIC CHILD CARE VIOLATIONS

Type of Facility	**Parent's Rights Addendum (Regarding Exclusion or Reinstatement) not given to parent, signed copy not maintained or not given to Licensing upon request** **(Use LIC 421B)**	**2nd or subsequent violation for failure to allow parent or guardian to enter and inspect facility or for retaliation/ discrimination stemming from a request to enter or lodging a complaint.** **(Use LIC 421B)**	**Failure to comply with Posting Requirements** **(Use LIC 421B)** • **Site Visit Notice – Failure to Post for 30 days** • **Type A Violations – Failure to Post for 30 days** • **Proof of Correction of Type A Violations – Failure to post for 30 days**	**Failure to return signed copy of Confirmation of Removal form to licensing within five days of the date of the form.** **(Use LIC 421B)**
Day Care Centers	N/A	$50 per violation	$100 immediate per violation	N/A
Family Child Care Home	$100 immediate per parent for a maximum of five days	$50 per violation	$100 immediate per violation	$50 per day

1-0090 FORECLOSURES, BANKRUPTCY AND CONTROL OF PROPERTY IN ADULT AND SENIOR CARE FACILITIES 1-0090

I. Control of Property in General

"Control of property" is a requirement imposed on all licensees and it is applied continuously, meaning a licensee must maintain "control" for the duration of the license. Without control of the licensed facility property, a licensee would not be capable of complying with the licensing "statutes, rules, and regulations" applicable to the property or buildings.

Accordingly, Health and Safety Code sections 1520(a) and (g), 1568.04 (a)(1) and (d), 1569.15(a) and (f) support the requirement that every license applicant demonstrate that they have control of the proposed facility property in order to establish their ability to comply with the licensing statutes, rules and regulations. In short, a licensee must always have the ability to comply with the statutes and regulations applicable to the license issued. To meet this licensing requirement, the licensee must have uninterrupted control over the licensed property.

Control of property is defined in regulation [California Code of Regulations, Title 22, section 80001(c)(18) for Adult Residential Facilities, Adult Residential Care Facilities for Persons with Special Health Care Needs and Social Rehabilitation Facilities; section 82001(c)(12) for Adult Day Programs; section 87801(c)(10) for Residential Care Facilities for the Chronically Ill; and section 87101 (c)(15) for Residential Care Facilities for the Elderly]. The Department may require evidence of control of the licensed property at any time. Control of property may be shown by any of the following documents:

a. a Grant Deed showing ownership in the name of the applicant/licensee; or

b. An executed lease agreement or rental agreement between the property owner and the applicant/licensee; or

c. a court order or similar document that shows the applicant/licensee's authority to control the property.

The LIC 200 (Application for a Community Care Facility or Residential Care Facility for the Elderly License) requires that the applicant state whether he/she/it owns or rents the proposed facility property and if rented or leased, the name, address and phone number of the property owner. The applicant is also required to provide proof of control of property at the time of application (LIC 281 Application Instructions for a Facility License).

If a licensee loses control over the property, the license is usually forfeited and the person/entity that *does* have control must apply for and obtain a license, if the operator intends to continue operating the facility.

1-0090 FORECLOSURES, BANKRUPTCY AND CONTROL OF PROPERTY IN ADULT AND SENIOR CARE FACILITIES **1-0090**
(Continued)

Eviction and Control of Property

If a licensee is evicted from a facility, the licensee no longer has the right to exclusive possession and, as a result, no longer has "control" of the property. As a result, the licensee no longer has the ability to comply with the licensing statutes and regulations applicable to the previously licensed facility. The license should be considered forfeited as the eviction is equivalent to a transfer of the facility to the evicting party or, at a minimum, a transfer of the licensee's leasehold interest in the facility property that qualified the licensee to hold a license.

When a licensee loses control of property due to being evicted the licensing program analyst must consult the licensing program manager and if needed, the Enforcement Unit attorney. Whenever there are clients/residents in care at the time of licensee eviction, the Regional Manager and the Program Office must immediately be notified. The Regional Manager or delegate must then immediately notify the clients/residents, responsible parties (if applicable), placement agencies (if applicable), Adult Protective Services and the local long term care ombudsman's office.

II. Control of Property: Foreclosures

A foreclosure is a formal action by a bank/lender to take the property from the owner/borrower when the owner/borrower has defaulted on his/her/its debt obligation. The lender does not take title until the foreclosure process has been completed. The foreclosure process can take between 4 months (non-judicial foreclosure) and several years (judicial foreclosure).

Foreclosures: "licensee/owner"

The following is general information related to foreclosures against a licensee when the licensee owns the facility property (also referred to in this document as the "licensee/owner"). Every case should be analyzed individually as there are many variables that may exist. In any case, where a licensing program analyst becomes aware of a foreclosure against a licensee/owner, the licensing program analyst must consult with their licensing program manager. In addition, the Enforcement Unit attorney should be contacted to obtain information on how the license has been affected by the foreclosure.

In most cases, the licensee/owner does not lose control of the property until the foreclosure process has been completed. At the conclusion of the foreclosure proceedings, the lender/bank has either taken title to the property or sold the property to a third party at a trustee's foreclosure sale. In either instance, the licensee no longer has control of property.

A licensee may lose control of the property *before* the conclusion of the foreclosure process if a receiver (person/entity appointed by the Court) is appointed and the receiver assumes control of the property while the foreclosure is proceeding. Please see the section entitled "Receiverships During a Foreclosure or Bankruptcy Proceeding."

1-0090 FORECLOSURES, BANKRUPTCY AND CONTROL OF PROPERTY IN ADULT AND SENIOR CARE FACILITIES **1-0090**
(Continued)

Typically, the licensee has lost control of property even if the licensee remains on the property after the conclusion of the foreclosure process. The licensee no longer has control of the property as the licensee no longer owns (holds title to) the property or has the right to exclusive possession. If the licensee has commenced legal action to challenge the foreclosure and remains in possession, the Community
Care Licensing Division may allow the licensee to pursue his/her/its claims prior to taking further action. The licensing program analyst should consult with his/her licensing program manager and the Enforcement Unit attorney under these circumstances.

In the unusual event that the bank/new owner immediately leases the property back to the licensee, the licensee could claim to have the maintained the uninterrupted control of the property necessary to keep his/her/its license. The leaseback would have to be immediate, however, as any delay would interrupt the licensee/borrower's control and result in a forfeiture of the license.

Foreclosures: "licensee/lessee"

The following is general information related to foreclosures against an owner of a property when the licensee leases the facility property from that owner (also referred to in this document as the "licensee/lessee"). Every case should be analyzed individually as there are many variables that may exist. In any case, where a licensing program analyst becomes aware of a foreclosure against the owner of a property that a licensee is leasing, the licensing program analyst must consult with their licensing program manager. In addition, the Enforcement Unit attorney should be contacted to obtain information on how the licensee's license has been affected by the foreclosure.

Situations may arise where the licensee has leased the facility property from the owner and the owner loses the property through foreclosure. In most cases, the owner does not lose control of the property until the foreclosure process is completed. Accordingly, the licensee/lessee's control is not affected during the foreclosure process as long as the owner still has control of property.

After the foreclosure process is complete and the owner has lost title of the property, the determination must be made whether the owner's loss of title to the property affects the licensee/lessee's control of the facility property. Whether the licensee/lessee loses control of property will depend on the terms of the lease, the terms of the lender's security interest, and the priorities between the licensee/lessee's leasehold interest and the lender's security interest.

If the licensees' leasehold interest has priority and survives the foreclosure, the licensee's control of the property remains uninterrupted and his/her/its license is unaffected by the foreclosure.

1-0090 FORECLOSURES, BANKRUPTCY AND CONTROL OF PROPERTY IN ADULT AND SENIOR CARE FACILITIES **1-0090**
(Continued)

If the new owner's title has priority and the licensee's leasehold is extinguished, the licensee/lessee has lost control of the property and the license is forfeited. Loss of control of property in this situation may be avoided if the new owner executes a new lease or recognizes the licensee's lease allowing the licensee to retain control of the facility property. Federal law may apply to afford the licensee additional time before he/she must vacate the property.

If a licensee/lessee is abruptly evicted because its lessor (property owner) lost control of the property through foreclosure, the licensee should be given an opportunity, and Community Care Licensing Division assistance, to close the facility and allow the clients/residents to relocate. While the Department is not a placement agency and has no authority to relocate clients/residents, the Community Care Licensing Division is responsible for coordinating planning of the relocation process (see Evaluator Manual, Reference Material, section 1-1000). The regional manager, and Adult and Senior Care Program Office must be immediately notified in this situation. The regional manager or delegate must notify the clients/residents, responsible parties (if applicable), placement agencies (if applicable), Adult Protective Services and the local long-term care ombudsman's office.

In general, the licensee should have notice of the foreclosure action and time to alert the clients/residents of the need to relocate. A licensee would not be allowed in this case to relocate clients/residents to an unlicensed setting or to a second facility operated by the licensee if doing so exceeded the capacity of the second facility. The emergency disaster relocation plan would not be applicable in this situation. The licensing program analyst should consult with his/her licensing program manager and the Enforcement Unit attorney under these circumstances.

Foreclosure and Clients/Residents

Once a lender takes control of property, clients/residents may still be residing at the facility. The licensing program analyst should not automatically issue a Notice of Operation in Violation of the Law and should allow the lender and/or its management company to file an application for a license to operate the facility pending its transfer to a third party. If the lender does not intend to continue operating the facility, all residents should be relocated immediately and a Notice of Operation in Violation of the Law may be appropriate. While the Department is not a placement agency and has no authority to relocate clients, the Community Care Licensing Division is responsible for coordinating planning of the relocation process (see Evaluator Manual, Reference Material section 1-1000). The licensing program analyst must consult with the licensing program manager and the Enforcement Unit attorney when a lender takes control of property and this situation becomes an even higher priority when clients/residents are still residing on the facility property.

1-0090 FORECLOSURES, BANKRUPTCY AND CONTROL OF PROPERTY IN ADULT AND SENIOR CARE FACILITIES **1-0090**
(Continued)

III. Control of Property: Bankruptcy

The following is general information related to bankruptcy and the effects on control of property. Every case should be analyzed individually as there are many variables that may exist. In any case, where a licensing program analyst becomes aware of a bankruptcy either against a licensee that owns the facility property or against the owner of the facility property where the licensee leases that property, the licensing program analyst must consult with his/her licensing program manager. In addition, the Enforcement Unit attorney should be contacted to obtain information on how the licensee's license has been affected by the bankruptcy.

In general, a bankruptcy proceeding is an action by a debtor for relief or protection from creditors' claims. The licensing program analyst is not authorized to take any action against the licensee upon learning a licensee is in bankruptcy until the licensee loses control of the property or there is a violation of licensing laws/regulation. The licensing program analyst must first consult with his/her licensing program manager and the Enforcement Unit attorney before taking any action.

The licensing program analyst and the licensing program manager may also consider whether a solvency audit should be requested. A solvency audit provides a determination regarding whether an applicant's or licensee's financial plan ensures sufficient resources to provide adequate care and supervision to facility clients. A solvency audit is not appropriate simply because the licensee is in the bankruptcy process however, violation of licensing laws/regulation (such as inadequate food and/or supplies) may indicate financial stress. Please see Evaluator Manual, Reference Material, Enforcement Actions, sections 1-0700 through 1-0790 for additional information.

Bankruptcy: "licensee/owner"

In most cases the licensee's control of property will not be interrupted unless/until the facility property is sold or a receiver takes possession (please also refer to the receivership information listed below). In a *reorganization* bankruptcy, the licensee's control usually remains intact. In a *liquidation* bankruptcy, a receiver is appointed or the property is sold and the licensee's control of the property ends.

Bankruptcy: "licensee/lessee"

In a reorganization bankruptcy where the licensee is leasing the property from the owner in bankruptcy, the licensee should be able to maintain control of the property under the lease. In a liquidation bankruptcy, generally, the owner's interest is sold but the impact of the sale on the licensee/lessee's control will depend on several factors that are too complex to abbreviate in this manual. The licensing program analyst must consult with their licensing program manager and Enforcement Unit attorney.

1-0090 FORECLOSURES, BANKRUPTCY AND CONTROL OF PROPERTY IN ADULT AND SENIOR CARE FACILITIES **1-0090**
(Continued)

IV. Receiverships During a Foreclosure or Bankruptcy Proceeding

The licensing program analyst may become aware of a situation where a court imposes a receivership. The following is general information regarding receiverships. When a licensing program analyst becomes aware that a court has imposed a receivership, the licensing program analyst must discuss this situation with his/her licensing program manager. In addition, the licensing program analyst and licensing program manager should staff any receivership with the Enforcement Unit attorney to determine what further action is necessary.

A bank/lender may obtain a court appointed receiver during the foreclosure process to take possession of the property, manage the revenues collected at the facility, and/or to otherwise protect the value of the lender's security interest. Similarly, a bankruptcy court may impose a receivership during certain types of bankruptcy actions. The receiver is typically placed at a property in bankruptcy to take possession of the property, manage the revenues collected at the facility, and/or to otherwise protect the value of the debtor's assets.

The duties of the receiver stated in the court order will determine whether the licensee has lost control of the property and whether the receiver must apply for and obtain a license. If the receiver is managing the facility or takes control of the property, the receiver must submit an application and obtain a license. The licensing program analyst must contact the Enforcement Unit attorney to determine if it is necessary for the receiver to apply for a license.

If the receiver must obtain a license (i.e., the receiver intends to engage in conduct at the facility for which a license is required by taking control of the property, managing the facility, or providing care and supervision) the licensing program analyst should work with the receiver to avoid closing the facility or disrupting the clients'/residents' care while the receiver's application is pending. A notice of operation in violation of law is generally not necessary if the receiver files an application for a license immediately following his/her/its appointment by court order as a receiver. In this case, a criminal record background clearance must immediately be acquired.

V. Control of Property: Other

Sharing Information about the Licensee

CCLD should not discuss the financial circumstances of any licensee with the licensee's lender and should only provide information about the licensee to the lender that is available to any member of the public.

Caring for Clients/Residents

A licensee's loss of control of the property does not exonerate the licensee from his/her its' admission agreement obligations to provide for their clients'/residents' wellbeing.

1-0090 FORECLOSURES, BANKRUPTCY AND CONTROL OF PROPERTY IN ADULT AND SENIOR CARE FACILITIES **1-0090**
(Continued)

Caring for Clients/Residents (Continued)

Licensees should give notice to the clients/residents of the impending loss of control and allow the clients/residents time to make arrangements for his/her relocation. If the licensee abandons the property and the clients/residents, the licensee may be held liable and the Regional Office should act so that the relocation of clients/residents can begin. While the Department is not a placement agency and has no power to relocate clients/residents, the Community Care Licensing Division is responsible for coordinating planning of the relocation process (see Evaluator Manual, Reference Material, section 1-1000). The regional manager, and Adult and Senior Care Program Office must be immediately notified in this situation. The regional manager or delegate must notify the clients/residents, responsible parties (if applicable), placement agencies (if applicable), Adult Protective Services and the local long-term care ombudsman's office.

Client/resident relocation may not be necessary if the lender or third party acquirer of control intends to take over the operation of the facility and files an application for a license. These situations must be assessed on a case-by-case basis. The licensing program analyst must immediately contact the licensing program manager and Enforcement Unit attorney when it is discovered that a licensee has abandoned a facility and clients/residents are still present at the facility location. In these cases, the regional manager, and Adult and Senior Care Program Office must immediately be notified. The regional manager or delegate must then immediately notify clients/residents, responsible parties (if applicable), placement agencies (if applicable), Adult Protective Services and the local long-term care ombudsman's office.

Change in Officers of a Corporation

There is no loss of control of property when there is a change in an officer of a corporation because the control of property remains with the corporation and not the individual.

Death of a Partner

Situations regarding control of property when there is a death of a partner in a business partnership will require the licensing program analyst to consult with his/her licensing program manager and the Enforcement Unit attorney.

3rd Party Disputes

If the licensee is in dispute with a 3rd party about who controls the property the licensing program analyst should consult with his/her licensing program manager and the Enforcement Unit attorney to assess the situation and determine if any further action is necessary. This includes disputes over control after a bankruptcy or foreclosure.

For additional information on control of property, please also refer to Evaluator Manual, Reference Material, Applications, section 3-0274.

1-0100 NON-COMPLIANCE WITH THE LICENSING LAWS AND REGULATIONS 1-0100

One of the goals of the Community Care Licensing Division is to ensure that all licensees are in substantial compliance with the licensing laws and regulations. In keeping with this philosophy, it is the policy of the Division to ensure that licensees are afforded an opportunity to correct deficiencies which have an immediate or potential risk to the health, safety or personal rights of clients in care prior to initiating an administrative action. If deficiencies are corrected within a reasonable time frame and civil penalties are not assessed, the licensee is considered in substantial compliance with licensing standards.

A non-compliant facility is one in which the licensee has a history of immediate or potential risk deficiencies, civil penalty assessments and/or intentional disregard of licensing laws and regulations. If deficiencies are not corrected, as required by the Plan of Correction (Refer to Evaluator Manual Section 3-3600), then further enforcement actions may be necessary.

1-0110 CASE ASSESSMENT 1-0110

There are a variety of circumstances which may lead the Licensing Program Analyst, Licensing Program Manager, and Regional Manager to recommend action against a licensee or applicant. There may be a licensee who chronically fails to comply with licensing requirements, or a situation where the Licensing Program Analyst has investigated and substantiated one or more complaints against a facility.

In addition, the Licensing Program Analyst may have received information from law enforcement, local health, fire, or sanitation officials, or sometimes from other sources, that the licensee or applicant in question has engaged in or is engaging in criminal conduct or other activity which creates a risk to the clients in care. In any of these circumstances, the Licensing Program Analyst, Licensing Program Manager and Regional Manager will have to do a total review of the case and decide on a course of action.

CASE ASSESSMENT CRITERIA

There are a variety of actions that can be taken with a non-compliant licensee or applicant. The particular type of action recommended may depend on any or all of the following factors:

- The seriousness of the problem(s).
- The risk of harm to clients in care.
- The length of time the Licensing Program Analyst has been working with the licensee or applicant to correct the problem(s).

1-0110 CASE ASSESSMENT (Continued) **1-0110**

- The degree of cooperation or ability that the licensee or applicant exhibits to come into and remain in full compliance with regulations within the stated time frames.

The following are some of the most common indicators found in identifying a non-compliant facility. Normally, more than one of these indicators will be present in a non-compliant facility. The Licensing Program Analyst should use this list in conjunction with EM Section 3-4200, Facility Evaluation (Assessing the risk of violation) to determine whether to initiate a facility compliance plan, schedule a Non-Compliance Conference or submit a request for administrative action. This is not an all-inclusive list and there may be other issues or combination of problems that would necessitate one of the actions listed above.

1. Evidence of imminent danger to the clients due to:

   a. Physical abuse
   b. Sexual abuse
   c. Questionable/wrongful death
   d. Serious unexplained injuries
   e. Serious medical emergency
   f. Lack of supervision resulting in any of the above
   g. Neglect or abandonment of facility/clients by licensee or staff
   h. Accessibility of bodies of water
   i. Leaving vulnerable clients unattended in automobiles
   j. Accessibility of firearms and ammunition
   k. Serious physical plant, structural, or fire safety issues

2. The fire clearance (if required) has been denied or revoked.

3. The licensee, employee, or non-client resident has been arrested for or convicted of a non-exemptible crime or a violent felony or misdemeanor or has had an exemption granted for a criminal record conviction and then receives a subsequent conviction.

4 The licensee has a history of citations and civil penalties for Criminal Background clearance violations.

5. The licensee continues to use corporal punishment after the licensee has been cited and advised that this is a personal rights violation.

6. *The facility has a history of Type A or B violations cited during a facility visit.* Please refer to Reference Material Section 3-4200 on Facility Evaluation for the definitions of Type A and B violations.

7. The licensee has a history of not correcting Type A or Type B violations within the Plan of Correction date.

1-0110 CASE ASSESSMENT (Continued) **1-0110**

8. The licensee has been assessed civil penalties two or more times for the same violation(s).

9. The licensee has a history of intentional disregard or willful violation of the licensing laws and regulations where the same type of deficiencies have been cited over a period of time.

10. The licensee is or has operated an unlicensed facility prior to becoming licensed.

11. The licensee is operating the facility with minimal financial resources which has affected the care and supervision of clients and the facility's operation.

12. The licensee has a history of hiring unqualified staff.

13. The facility has a pattern of continual overcapacity.

14. There are misdemeanor arrests or convictions of licensee or employees.

15. The licensee has expanded their business to include three or more facilities over a short period of time which has affected the facility's operations and has seriously affected the licensee's ability to meet the needs of the clients.

16. The facility is unsanitary, constantly dirty and poorly maintained.

17. The facility has a history of high turnover in administrative and direct care staff.

18. The facility has a history of no planned activities/programs for their clients.

19. The facility has a history of inadequate storage and retention of medications or mismanagement and recording of medications.

20. The facility has a history of poor food service/storage.

21. Adverse conditions exist which have a direct relationship to the health and safety of clients.

22. Conditions indicate a lack of respect for human dignity.

23. Evidence indicates licensees or employees have aided, abetted or permitted violations of laws or regulations.

24. Misuse of client's cash resources has occurred.

1-0110 CASE ASSESSMENT (Continued) **1-0110**

25. Evidence exists of conduct in the operation and/or maintenance of a facility which is inimical to the health, morals, welfare or safety of clients or the people of California.

Keep in mind, when assessing a case, that California Department of Social Services and its agents, State and county licensing staff, are delegated by law with the responsibility of protecting clients in care. Failure of a Licensing Office to take appropriate action in a given case could result in liability to the State and/or county. Moreover, if a Licensing Program Analyst knowingly allows a dangerous situation to exist without using the resources of the State and/or county to abate the problem, and a client is harmed as a result, he or she could incur some personal liability.

Once a facility has been identified as non-compliant, the next step is the completion of the facility compliance plan, unless the problems are serious enough to proceed with stronger actions. Refer to Section 1-1010. If so, consult with the Licensing Program Manager immediately.

1-0200 FACILITY COMPLIANCE PLAN **1-0200**

The Licensing Program Analyst is responsible for initiating the LIC 9112, Facility Compliance Plan Form. The LIC 9112 is designed to help formalize a plan of specific actions for the Licensing Program Analyst to use to resolve facility problems with the licensee prior to holding an informal meeting with the Licensing Program Manager or a Noncompliance Conference with the Regional Manager. Prior to a meeting with the Licensing Program Manager, the Licensing Program Analyst will do a complete review of the facility's licensing file to determine patterns of noncompliance, type of violations (A or B), period of time the facility has been out of compliance, and whether the clients are at risk or potential risk. The Licensing Program Analyst analyzes this information, and develops a concise statement of the problem, including a recommended course of action.

The Licensing Program Analyst must discuss the case with the Licensing Program Manager and Regional Manager who will then decide whether the issues are serious enough to discuss the problems with the Licensing Office's assigned Legal Consultant. If so, the Licensing Program Manager or Regional Manager will contact the Consultant and note the recommended course of action.

The Licensing Program Analyst initiates a facility compliance plan, by completing the top part and Sections A and B. Section C or the Legal Consultant's recommendation will be completed by either the Licensing Program Manager or Regional Manager. The options for the Licensing Program Manager are either to concur, request additional data or generally disagree with the plan developed by the Licensing Program Analyst. After making a decision, the Licensing Program Manager will complete Section D and forward the plan to the Regional Manager.

1-0200 FACILITY COMPLIANCE PLAN (Continued) **1-0200**

The Regional Manager will either approve or reject the plan by completing Section E. If there is agreement that the Licensing Program Analyst and Licensing Program Manager should have an Informal Meeting with the licensee, a discussion with the Regional Manager should take place prior to the scheduled Informal Meeting. If the recommendation is to proceed to a Non-Compliance Conference, a copy of the LIC 9112 is to be sent to the Assistant Program Administrator or Program Administrator when the Regional Manager determines the case is likely to be escalated due to complaints, media attention, etc.

At the Informal Meeting, the Licensing Program Analyst and Licensing Program Manager thoroughly go over the facility compliance plan with the licensee, reach an agreement for correcting the problems and answer any questions and/or concerns the licensee may have.

During the Informal Meeting, other contacts and resources should be made available to the licensee to assist them in reaching substantial compliance with licensing laws and regulations. The Audit Section (refer to Section 1-0700, Audit Services) is available to assist the licensee in obtaining compliance with the safeguarding of client/resident cash resources.

For example, problem licensees may, as part of the Plan of Correction be required to attend a training session in the Licensing Office, where training is presented by the auditor and Licensing Program Analyst. The licensee has the right to agree or decline any assistance that is offered to them.

A summary of the Informal Meeting will be completed on the LIC 809 by the Licensing Program Analyst, signed by the licensee/administrator and given to the licensee outlining what took place during the meeting and specifics concerning plans for correcting the deficiencies. If it is not feasible to complete the summary during the meeting, the LIC 809 will still be issued, however, it must be documented on the form that detailed information regarding the conference will follow. The follow-up letter or correspondence should be sent by certified mail to the licensee within five calendar days of the conference. This shall be documented and reflected on the Field Automation System (FAS). (See EM Section 3-3011, Documentation Requirements for Child Care Facilities, regarding additional documentation needed on the LIC 809 or letter).

The licensee should be advised at the end of the Informal Meeting that failure to correct deficiencies by the given due dates, agreed upon during the meeting, could result in a Non-Compliance Conference.

The Licensing Program Analyst shall make an unannounced follow-up evaluation to verify that the corrections have been accomplished within the agreed upon time frame.

NOTE: Informal Meetings or Non-Compliance Conferences are not appropriate in

1-0200 FACILITY COMPLIANCE PLAN (Continued) **1-0200**

situations of physical and sexual abuse or where there is imminent risk to the clients. These cases should be referred immediately to the Legal Division.

(All references to FAS apply to Community Care Licensing staff and do not apply to counties.)

1-0300 NON-COMPLIANCE CONFERENCE 1-0300

The purpose of the Non-Compliance Conference is to, in the presence of the Regional Manager, review problem areas and impress upon the licensee the seriousness of the situation. The need for a Non-Compliance Conference may arise from a series of repeated licensing violations, issuance of civil penalties, informal meetings or telephone conversations with the licensee. The licensee should be informed that unless deficiencies are corrected and continued compliance is maintained, the case will be referred to the Legal Division for administrative action. In addition, it must be made clear to the licensee that the conference does not in any manner excuse past problems or resolve the Department's case against the licensee if the problems are not corrected. The Non-Compliance Conference may be the last step prior to initiating administrative action following unsuccessful attempts by the Licensing Program Analyst and Licensing Program Manager to gain compliance.

If a licensee's non-compliance issues could warrant legal action but, after a careful assessment of the case, the Regional Manager decides to work with the licensee and not proceed with the legal action, a Non-Compliance Conference must be held. If Licensing Office staff have any questions concerning the need for a Non-Compliance Conference, rather than going directly to an administrative action, the Licensing Office's assigned Legal Consultant should be consulted for guidance.

Prior to a Non-Compliance Conference, Licensing will notify the licensee in writing of the time, date, place and reason for the conference. Refer to Section 1-0315 for a sample letter to be sent to licensee. The licensee is also told that he or she may bring his or her administrator, legal representative, CEO, or whomever he or she chooses to the conference.

Prior to the conference, the Licensing Program Analyst, Licensing Program Manager, Regional Manager and any other interested or pertinent party (county representative, Department of Education Child Development Division Representative, etc.) shall meet to discuss the case and the conference presentation. This discussion should occur promptly and when applicable.

1-0310 DOCUMENTING THE NON-COMPLIANCE CONFERENCE 1-0310

The Non-Compliance Conference shall be documented on a LIC 9111. Prior to the conference, the portion of the LIC 9111 with information identifying the facility and the list of issues or deficiencies should be completed. The remainder of the form is completed during the Non-Compliance Conference. All individuals attending the conference must be listed on the LIC 9111. Additionally, the form must provide a summary of what was agreed upon between the licensee and the Regional Manager in order to bring the facility into compliance, the plan of action date and the consequence(s) to the licensee if he/she fails to take the actions within the date(s) specified on this form. Community Care Licensing Division staff will document this process via the Field Automation System (FAS).

It is imperative that the LIC 9111 is concise, complete and focused on the issues and facts. Once the LIC 9111 is completed, request that the licensee sign the form, the Regional Manager will sign and a copy will be provided to the licensee.

There may be instances when it is not feasible to complete the LIC 9111 at the time of the conference. During such conferences, there may be numerous issues that need to be discussed with Department staff prior to completing the summary. At times, the Licensing Office's assigned Legal Consultant may need to be contacted after the conference regarding information and issues that emerge during the conference. In these situations, the LIC 9111 will still be issued, however, it must be documented on the form that detailed information regarding the conference will follow. The follow-up letter or correspondence should be sent by certified mail to the licensee within five calendar days of the conference. This shall be documented and reflected in FAS. (See EM Section 1-0311 Documentation Requirements for Child Care Facilities, regarding additional documentation needed on the LIC 809 or letter.)

(All references to FAS apply to Community Care Licensing staff and do not apply to counties.)

1-0311 DOCUMENTATION REQUIREMENTS FOR CHILD CARE FACILITIES 1-0311

Whenever a child care licensee or designee attends a meeting conducted by a local licensing agency management representative and issues of Non-Compliance are discussed (Informal Meetings, Non-Compliance Conferences, and Compliance Conferences), the licensee must provide a copy of the licensing document to parents of each child in care and to parents of any children that enroll in the facility during the following 12 months. This information must be reflected on any licensing document resulting from the meeting.

1-0315 SAMPLE NON-COMPLIANCE CONFERENCE LETTER LANGUAGE 1-0315

Date

(Licensee Name)
(Facility Name)
(Address)
(City, State, Zip)

Dear _____:

The policy of Community Care Licensing Division is to ensure that licensees are afforded an opportunity to correct deficiencies prior to our initiating legal action to close a facility. With the exception of situations where an immediate danger to clients exist, staff from the Regional Office will work with the licensee to gain compliance and whenever possible, to prevent the closure of the facility.

In order to accomplish this goal, a Non-Compliance Conference is held with the licensee prior to referring a case for legal action. Due to problems that currently exist at your facility, we would like to give you an opportunity to bring your facility into compliance. Therefore, we have scheduled a conference with you on _____, at _____in the _____Regional Office at the above address. Your attendance at this conference is mandatory.

The purpose of the conference is to discuss the existing deficiencies, any current problem areas in the operation of your facility, the seriousness of the situation, and the legal action which will be taken by the Department if the situation is not corrected. Your continued noncompliance will result in a referral for legal action, so it is extremely important that all deficiencies be corrected in a timely manner.

If you wish, you may bring someone to help you in this review. It can be any person or persons of your choosing who may be of assistance to you. Also, if you are unable to keep this appointment, please contact _____ at ( ) _____, immediately so we may reschedule it as soon as possible.

Sincerely,

Regional Manager

1-0320 COMPLIANCE PLAN CONFERENCE CRITERIA 1-0320

The Compliance Plan is a Plan of Correction submitted by the licensee and the Regional Office that establishes specific actions the provider will take to improve the operation of the facility. The Compliance Plan is an enforcement tool that may be appropriate in a variety of situations where enforcement intervention is warranted. It is not an option when there is an immediate threat to the health and safety of clients or in situations where the safety of clients is of concern.

The Compliance Plan may be used in lieu of a request for legal review when there is clear evidence that the licensee is willing and able to maintain compliance with licensing regulations and statutes. The licensee must also be capable of providing the level of care and supervision needed by clients in care.

The Compliance Plan may be used in the following situations:

- The facility provides marginal care for clients as documented in licensing reports but has demonstrated the ability to improve the quality of care and supervision.

- The facility has a history of coming into compliance after being cited, but fails to remain in substantial compliance.

- The licensee is cooperative and has made a good faith effort to comply, but needs additional training and consultation.

- The evidence justifies an enforcement action, but probation rather than revocation of the license is the desired or likely outcome. The likelihood of probation must be confirmed by consultation with the Licensing Office's assigned legal consultant.

The Compliance Plan is a demonstration of the licensee's intention to make a good faith effort to comply and remain in substantial compliance with licensing regulations and statutes. If the licensee fails to maintain compliance with the conditions established in the plan, revocation action may be pursued.

The Compliance Plan does not preclude the Department from initiating administrative action if the licensee fails to implement and maintain improvements to the quality of care and supervision or fails to make other changes as reflected in the plan. The Compliance Plan should be viewed as an additional way of responding to problem facilities, especially those facilities with other than serious health and safety problem histories.

- The Compliance Plan may be used with all categories of facilities and may be used independent of the Non-Compliance Conference.

- It does not preclude additional citations by the Licensing Program Analyst.

1-0320 COMPLIANCE PLAN CONFERENCE CRITERIA (Continued) **1-0320**

- The Licensing Agency may make additional visits to ensure compliance.
- It does not prohibit the assessment of Civil Penalties.
- It does not prohibit the subsequent issuance of an Accusation, employee exclusion or temporary suspension order if conditions warrant.
- It does not preclude the assessment of Civil Penalties.
- It will become part of the facility's plan of operation for the duration of the plan.

The Compliance Plan is a public document signed by the licensee and Regional Manager that (1) clearly describes the licensing violations which have occurred, (2) identifies the corrections which the licensee will implement and the time frames for implementation, (3) spells out the consequences for failure to fulfill the terms in the plan and (4) preserves the Department's options, should the situation require additional action. A copy of the plan will be maintained in the facilities public file and failure to abide by the conditions of the plan may result in a referral for revocation without the need to conduct a Non-Compliance Conference.

1-0325 SAMPLE COMPLIANCE PLAN CONFERENCE LETTER LANGUAGE 1-0325

Date

Licensee Name _____
Corporate President _____
Facility Name _____
Facility Address _____
Facility Type _____

Dear Licensee,

The California Department of Social Services, Community Care Licensing Division has determined that Licensee_____, who is licensed to operate [FACILITY NAME AND ADDRESS], has violated licensing laws in the following general categories: [ ] Personal Rights [ ] Financial Issues [ ] Personnel: Qualifications and Duties [ ] Food Services [ ] Reporting Requirements [ ] Record Keeping Health Related/Incidental Medical Services [ ] Client Supervision, Assistance and Care [ ] License Limitations [ ] Physical Plant [ ] Other. These violations are described in licensing reports and other documents dated _____, and _____.

Licensee(s)/Corporate President/Board of Directors acknowledge responsibility for the deficiencies cited in licensing reports and other documents referenced above.

Licensee(s) Corporate President/Board of Directors _____, having fully reviewed the facility file, which details citations for violations of the Health and Safety Code and/or Title 22 of the California Code of Regulations, submit the following Compliance Plan to correct or remedy these deficiencies in compliance.

LICENSEE'S COMPLIANCE PLAN

The licensee agrees to make specific operational charges with regard to the administration and operation of the facility. **(N)**

(For Example)

- The licensee/administrator will be present at facility _____ number of hours per week.

- Staff for a.m. and p.m. shifts will be increased to a total of _____ for a.m. and _____for p.m.

1-0325 SAMPLE COMPLIANCE PLAN CONFERENCE LETTER LANGUAGE 1-0325
(Continued)

- Quarterly training for all direct care staff in the areas of medication storage, handling, dispensing, and record keeping will be given or obtained.

The licensee acknowledges receiving a copy of statutes/regulations and fully understands the licensing requirements pertaining to the operation of the facility. **(M)**

After review, it appears to the Department that this Compliance Plan addresses the deficiencies in compliance listed above. The Department will monitor the licensee's compliance with the Compliance Plan over the next [TIME PERIOD] to determine whether the licensee is operating the facility in a manner consistent with the law and the Compliance Plan. The licensee understands and acknowledges that the Department, at its discretion, will make unannounced case management visits to monitor the licensee's compliance with this Compliance Plan. **(M)**

During the time period when the Compliance Plan is in effect, if the Department determines that the licensee has violated the law or that the Compliance Plan is inadequately implemented to remedy the licensee's noncompliance, the Department, in its discretion, may refer the facility for revocation of the license or other appropriate administrative action. **(M)**

By accepting this Compliance Plan and monitoring the facility's operation under the terms agreed to by the licensee, the Department is not deprived of its authority to take appropriate formal legal action under the Health and Safety Code when such action is deemed necessary by the Director. **(M)**

In the event that formal legal action is taken, nothing in this plan precludes the Department from including non-compliance issues referred to in this Compliance Plan. **(M)**

Regional Manager _____ Date _____

Licensee/Board President _____ Date _____

N – To Be Negotiated
M – Mandated

c: File
Licensee
Program Administrator

1-0330 COMPLIANCE PLAN CONFERENCE OFFICE PROCEDURES 1-0330

When the Licensing Program Analyst identifies a facility with non-compliance issues that may be resolved by the use of the Compliance Plan:

1. The Licensing Program Analyst reviews the file, completes a "Facility Compliance Plan Form" (LIC 9112), informs the Licensing Program Manager of the situation and recommends the use of a Compliance Plan conference.

2. The Licensing Program Manager reviews:

   a. The Licensing Program Analyst's documentation and recommendation for a Compliance Plan.

   b. Any plans of correction previously developed by the licensee.

   c. Summaries of any non-compliance conferences previously held with this licensee.

3. The Licensing Program Manager and Licensing Program Analyst develop a Compliance Plan tailoring the plan to the specific compliance issues identified.

4. The Licensing Program Manager makes recommendations and submits the plan to the Regional Manager for review.

5. The Regional Manager reviews:

   a. The summary of the Non-Compliance Conference or other enforcement/consultation actions.

   b. The current status of any deficiency reports.

   c. The recommendation and rationale for the Compliance Plan.

6. The Regional Manager advises the Program Administrator of the intended action.

7. County licensing personnel advise the regional county liaison of the proposed use of the Compliance Plan.

1-0330 COMPLIANCE PLAN CONFERENCE OFFICE PROCEDURES (Continued) **1-0330**

8. The Regional Manager sends the licensee a letter explaining the Department's desire to enter into a Compliance Plan in order to bring the facility into compliance and avoid taking administrative action. A copy of the draft Compliance Plan proposed by the Department may be sent with the letter. A meeting date and time are specified to review the file, go over the plan and obtain signatures. If the licensee does not wish to participate, the matter will be referred for administrative action.

There are two components to a Compliance Plan Conference: (1) The licensee reviews the facility file, (2) The licensee meets with the Regional Manager, Licensing Program Analyst and Licensing Program Manager to discuss the plan. In this meeting:

- Violations are reviewed.
- Corrective actions and time frames are developed and agreed upon.
- Consequences for failure to comply are reviewed.

Three copies of the plan are signed: One for the licensee, one for the facility's public file, one for the Statewide Program Office. Regional Offices will identify/flag the files of facilities, which have signed Compliance Plans in the same way legal cases are identified. A log will be maintained of all facilities with Compliance Plans. Licensing Program Analysts will flag all facilities with Compliance Plans on the problem facility log.

Periodic site visits may be conducted by the Licensing Program Analyst to ensure compliance. Violations of the conditions will be reviewed by the Licensing Program Manager/Licensing Program Analyst and a recommendation for amending, dissolving, or continuing the plan will be forwarded to the Regional Manager for decision. If dissolution is sought, administrative action will be initiated through the standard legal process and a letter of dissolution sent to the licensee with copies to the facility's file and Program Administrator.

1-0335 LETTER LANGUAGE TO SCHEDULE A COMPLIANCE PLAN MEETING 1-0335

Date

Licensee Name _____
Address _____
City, State Zip Code _____

RE: Facility Name and Facility Number

Dear Licensee,

The _____ Regional Office has reviewed the licensing history of your facility(ies), including prior citations and efforts to achieve compliance with licensing requirements and has concerns regarding noncompliance issues relating to deficiencies with Title 22 of the California Code of Regulations. We would like to offer you the opportunity to enter into a Compliance Plan with this office. The Compliance Plan establishes specific actions you will take to improve the operation of your facility. We anticipate that participation in this plan will help minimize the need for administrative action against your license.

A meeting has been scheduled at the _____ Regional Office at _____ on _____ at _____a.m./p.m. to discuss a Compliance Plan for your facility. Your facility file will be available for your review; please allow ample time before the meeting to review you file. (Optional – A proposed plan has been enclosed for your review and will be a starting point for our discussion).

The Department appreciates your anticipated cooperation and willingness to participate in this Compliance Plan. If you have any questions, you may contact your Licensing Program Analyst at ( ) _____.

Sincerely,

Regional Manager

c: File
Licensee
Program Administrator

1-0400 SUPPORT UNITS 1-0400

The Department uses investigative and support units to assist in cases both before and after they are referred to the Legal Division for administrative action. The following sections define the purpose and functions of the Investigations Branch (1-0600) and the Audit Section (1-0700).

1-0500 TECHNICAL SUPPORT PROGRAM (REPEALED 11/07) 1-0500

1-0600 INVESTIGATIONS BRANCH 1-0600

Under the direction of the Program Administrators, Investigations Branch receives requests for investigative services from the Regional Offices within the Community Care Licensing Division, the California Department of Social Services Legal Division and other authorized sources.

1-0610 INVESTIGATIVE SERVICES 1-0610

Investigations Branch provides five types of investigative services:

1. **Investigation:** Objective investigation of the complaint to determine the validity of the allegations, determine the findings, recommend course of action, and prepare written report.

2. **Investigation Assignment:** Specific investigative tasks (e.g., obtaining criminal record verification, police reports, or hospital records, serving temporary suspension orders, interviewing suspects or victims).

1-0610 INVESTIGATIVE SERVICES (Continued) **1-0610**

3. **Consultation Services:** Suggestions, instructions and information both general and specific, to assist Regional Office staff in conducting investigations or evaluating information.

4. **Legal Support:** Assistance to attorneys in the administrative, criminal, or civil prosecution of established violations.

5. **Criminal Arrest Inquiries:** Investigations into the alleged criminal conduct of individuals subject to Community Care Licensing Division jurisdiction.

1-0620 INVESTIGATIVE PRIORITIES 1-0620

Complaints will be investigated by the appropriate staff (Investigations Branch and/or Regional Office) depending on the nature and severity of the complaint allegation and/or the decisions made by the Team Review during the referral process (see *Evaluator* Manual Section Appendix F) for discussion of Team Review process). The most serious complaints will be Priority I and the least serious complaints will be Priority IV.

Please note that the definitions of the Priorities are not the same as the definitions of abuse provided by statutes (i.e. Penal Code 11165.6-definition of child abuse; Welfare and Institution Code 15610.07-definition of elder abuse)

The Licensing Program Manager or Regional Manager will refer all complaints that meet the criteria for Priority I and/or II cases to Investigations Branch for investigation. This type of complaint will be referred to Investigations Branch within eight working hours of receipt via telephone or FAX and prior to any action being taken by the Regional Office. Case acceptance or rejection will be determined after consultation between the Regional Office staff and Investigations Branch. The Regional Manager may refer Priority III complaints, as he/she deems appropriate. The inquiry into Priority IV complaints will be the responsibility of the Regional Office.

In cases of multiple allegations of various priorities, the Team Review Process (See Evaluator Manual Section Appendix F) will determine Investigator/Licensing Program Analyst responsibilities during the investigation. In general, the Licensing Program Analyst will retain responsibility for the investigation of Priority III and IV allegations, unless otherwise determined through prior agreement. The assigned Investigator and Licensing Program Analyst will coordinate their investigations through regular consultation.

In the case of a probable temporary suspension order, the investigator must keep the Program Administrator/Regional Manager/Assigned Attorney informed of the progress of the investigation through the Team Review Process (see Evaluator Manual Section Appendix F). Supporting documentation should be sent by the investigator on an ongoing basis to appropriate staff.

1-0620 INVESTIGATIVE PRIORITIES (Continued) **1-0620**

Once the investigation is completed, the final report should be sent to the Regional Manager and Program Administrator within the timeframes established by the Regional Office/Investigations Branch Team. Refer to Evaluator Manual Complaints Section 3-2010, General Statement for definitions of Priority I – IV.

1-0630 CASE ACCEPTANCE **1-0630**

As a result of Investigations Branch's limited resources and the necessity that the Community Care Licensing Division investigate serious complaints in a timely manner, the following guidelines are established:

Investigations: Investigations Branch will accept requests for investigations when the investigator(s) assigned to the Regional Office area can reasonably expect to start the case within ten working days and complete the case within 90 **(calendar)** days.

Assignments: Investigations Branch will accept requests for an investigative assignment when the investigator(s) assigned to the Regional Office area can reasonably expect to complete the assignment within any required time limits.

Unlicensed Facility Investigations: Investigations Branch will accept requests for unlicensed facility investigations when efforts by Regional Office staff have failed to obtain compliance according to Section 1-0640.

When the Regional Office has more requests for services than Investigations Branch can reasonably complete in a timely manner, Investigations Branch will accept the higher priority case(s). When the Investigations Branch Supervising Investigator and the Regional Office staff must select between cases of equal priority, the following factors will be utilized in the selection process:

1. The possibility of continued abuse to clients and the severity of the injury(s).

2. The amount of involvement of local law enforcement or other investigative organizations in the case.

3. The requirement for a lengthy investigation.

4. The ability of the assigned Licensing Program Analyst to handle the investigation with case consultation from Investigations Branch.

5. Investigations which require travel outside the Regional Office boundaries.

The operational necessity of the Division may mandate deviance from this policy. Exceptions should be requested through the Program Administrator.

1-0640 UNLICENSED FACILITY COMPLAINT INVESTIGATIONS 1-0640

Rationale

Investigations Branch is responsible for the investigation of unlicensed child care facilities, residential care facilities for the elderly, residential care facilities for the chronically ill and community care facilities. The large number of unlicensed facilities in all categories makes it operationally impractical for Investigations Branch to accept every complaint of known or suspected unlicensed operation. Consequently, and in order to establish a system of priorities, Division policy defines specific Regional Office responsibilities to be met prior to acceptance by Investigations Branch of an unlicensed facility complaint.

Complaints and Facility Visit

The Regional Offices will receive and review all complaints of unlicensed facilities. If the complaint is routine, Regional Office staff will make the required ten-day visit. If the complaint indicates severe danger to clients or Priority I or II Referral, the Regional Office will immediately refer the complaint (LIC 802) to the Investigations Branch, which will assume the responsibility for the ten-day visit unless other arrangements are made with Regional Office staff.

For Residential Care Facilities for the Elderly or Adult Residential Facilities, the review tool may be used by the Licensing Program Analysts to assist in determining whether licensure is required for certain types of living arrangements. When using this review tool, Licensing Program Analysts would assess what the operator has agreed to provide in the living arrangement. There may be instances where sufficient evidence exists to substantiate an unlicensed operation complaint against the operator without the use of this review tool or with partial completion of the review tool. The Regional Office consulting enforcement attorney should be assisting every step of the way with these fact intensive decisions, and in all situations, the Regional Manager and/or Licensing Program Manager must be consulted before making a determination of finding. Information used to determine the scores can come from several sources including, but not limited to: observations and interviews with individuals residing at the location; interviews with the operator; or information received from other sources such as a hospice agency, home health agency, discharge planner, placement agency, social worker or the local ombudsman office.

Facility Visit Results

1. **Unfounded:** If a review of all evidence obtained by the Licensing Program Analyst during the visit indicates an unfounded allegation, the Regional Office will close the case.

2. **Inconclusive:** If evidence obtained during the visit is inconclusive, the Regional Office should consult with Investigations Branch for possible assistance. This may include cases where the Licensing Program Analyst was denied entry.

1-0640 UNLICENSED FACILITY COMPLAINT INVESTIGATIONS 1-0640
(Continued)

3. **Substantiated/Routine:** If evidence obtained indicates substantiation of the allegation and no apparent danger to clients, the Licensing Program Analyst will issue a Notice in Violation of Law and requiring the operator to submit an application as soon as possible. For family child care homes, Licensing Program Analysts must wait 15 days after requesting the operator to submit an application before issuing a Notice in Violation of Law. Refer to Evaluator Manual Section 1-1190 for notification procedures.

4. **Substantiated/Danger to Clients:** If evidence obtained by the Licensing Program Analyst during the visit indicates substantiation of the allegation and an apparent danger to the clients in care, the Licensing Program Analyst will issue a Notice in Violation of Law and refer the case to Investigations Branch as soon as possible. Refer to Evaluator Manual Section 1-1190 for notification procedures. The Licensing Program Analyst shall also, when appropriate, notify local law enforcement.

Application

1. **Application Granted:** If the Regional Office grants the operator a license, the case should be closed.

2. **Application Denied:** If the Regional Office denies the unlicensed operator's application, and the Regional Office has confirmed that the applicant has failed to remove clients within the required time frame the case should be referred to Investigations Branch as soon as possible. Refer to Evaluator Manual Section 1-1190 for notification procedures.

3. **No Application:** If no application has been received within 15 days, the Regional Office will refer the case to Investigations Branch. If the Regional Manager believes the unlicensed operator will comply with the law in the foreseeable future, the referral may be withheld at his or her discretion. Refer to Evaluator Manual Section 1-1190 for notification procedures.

1-0650 CASE REFERRALS FROM OUTSIDE SOURCES 1-0650

When Investigations Branch receives complaints from sources other than through the Regional Offices, the complaints shall be referred to the appropriate Regional Office with the following expectations:

Law Enforcement Agencies

When Investigations Branch receives a complaint directly from a law Enforcement Agency, a service request will be prepared by Investigations Branch and the appropriate Regional Manager will be notified as soon as possible. An investigation will be initiated by either the Statewide Program Office or the Regional Office in accordance with established policy and procedures.

1-0650 CASE REFERRALS FROM OUTSIDE SOURCES (continued) 1-0650

Deputy Director/Program Administrator

Requests for investigation from the Deputy Director or Program Administrator shall be documented on a service request by Investigations Branch. The Regional Manager will be notified at the direction of the Deputy Director and/or Program Administrator.

1-0700 CENTRAL OPERATIONS BRANCH, AUDIT SECTION 1-0700

The Community Care Licensing Division, Audit Section receives requests for audit services from Regional Offices when there are financial concerns at all facility types except Group Homes or Foster Family Agencies. Financial/audit needs involving Group Homes and Foster Family Agencies are to be directed to the Foster Care Audits Branch in the Children and Family Services Division. You can use the same form (LIC 837) (Services Request for Audit Services) and process for requesting audit services from Foster Care Audits Branch. Forward Group Home and Foster Family Agency audit request to the Foster Care Audits Branch at Mail Station 19-24. All other audit requests are to be forwarded to the Central Operations Branch, Audit Section at Mail Station 19-49. Program Administrators and Licensing Program Managers are responsible for referring services requests for cases that meet Audit Section criteria.

The primary objectives of the Audit Section includes, but are not limited to ensuring that:

1. Client cash resources are handled, safeguarded and accounted for properly.

2. Applicants and licensees have a financial plan which ensures sufficient resources to meet operating costs.

3. Licensing staff make timely and informed audit-related decisions.

1-0710 AUDIT SERVICES 1-0710

Audit services focus on the completion of audit casework in a timely manner, through the performance of trust and solvency audits conducted in accordance with Generally Accepted Governmental Auditing Standards. Providing these services in support of Regional Office functions is Audit Section's primary role. Within Community Care Licensing Division, Audit Section staff possess the necessary training and expertise to evaluate financial issues in detail.

Requests for services by the Regional Office at times exceed the Audit Section's capabilities due to limited staffing. When this occurs, the Audit Section attempts to address this problem by limiting the scope of services for particular audits by focusing solely on the primary issue identified in the LIC 837. These limited scope assignments are referred to as financial investigations for Audit Section inventory purposes. Financial investigations conform to Generally Accepted Governmental Auditing Standards.

Auditors may also provide opinions on audit-related issues via phone, fax and email. This type of service is referred to as a consultation. All consultations are documented

1-0710 AUDIT SERVICES (Continued) **1-0710**

and inventoried. A copy of the completed consultation will be shared with the appropriate Regional Office. By conducting financial investigations and consultations, the Audit Section attempts to respond to specific Regional Office needs timely without having to conduct comprehensive trust or solvency audits.

The Audit services must be requested by submitting a LIC 837. All LIC 837s submitted for audits are to be completed by Regional Office staff and approved by Regional Office Managers and Program Administrators.

The Audit Section provides other services that are secondary to performing audits, investigations and consultations. These services include, but are not limited to:

1. Assisting in the development of policies, procedures, regulations, and forms.

2. Providing training to applicants, licensees and Community Care Licensing Division staff.

3. Processing requests for *Group Residence Locator System* information. A Group Residence Locator System provides a listing of Supplemental Security Income/State Supplementary Program (SSI/SSP) recipients at a specific address. Additionally, the Audit Section can obtain information from the Secretary of State on the status of corporations (Certificate of Good Standing). Group Residence Locator system and corporation status requests are transmitted to Audit Section by interoffice mail or fax on a LIC 837. Requests for Group Residence Locator system and corporate status do not need Regional Office Manager or Program Administrator approval.

4. Filing claims against facility surety bonds when licensees fail to make determined restitution to or on behalf of clients.

5. Assisting staff attorneys in administrative actions that include audit findings.

1-0720 DESCRIPTION OF AUDIT SERVICES **1-0720**

TRUST AUDIT: A program audit in compliance with Generally Accepted Governmental Auditing Standards. Trust audits include reviewing and monitoring a licensee's compliance with safeguarding, bonding and accounting statutes and regulations regarding the handling of client cash resources. Trust audits are conducted when it is suspected that clients may have been the victims of fiduciary abuse perpetrated by the licensee or facility staff. Audit findings may lead to administrative actions to revoke facility licenses. Findings may also be used to support criminal prosecutions.

SOLVENCY AUDIT: A program audit in compliance with Generally Accepted Governmental Auditing Standards. Solvency audits provide a determination regarding whether an applicant's or licensee's financial plan ensures sufficient resources to provide adequate care and supervision to facility clients.

1-0720 DESCRIPTION OF AUDIT SERVICES (Continued) 1-0720

INVESTIGATION: A review involving one or more of the activities normally conducted in the performance of trust or solvency audits. Financial investigations provide the Regional Offices with input to assist in making timely informed audit-related decisions. These investigations are normally performed without having thoroughly analyzed all related issues, without on-site testing of source data and without the usual supervisory oversight. Investigations include, but are not limited to, opinions regarding start-up funds, credit reports, bankruptcies, safeguarding, commingling and surety bonds. Investigations are permitted under Generally Accepted Governmental Auditing Standards in Sections 2.10 and 2.11 based on "agreed upon procedures" established by Audit Section and described in Chapter 1 of the Program Support Bureau, Audit Section Manual.

CONSULTATIONS: Providing advice on financial matters usually via phone, fax and/or email. All consultations are documented and inventoried. The consultation is usually summarized in an email and shared with the Regional Office.

1-0730 REQUESTING AUDIT SERVICES 1-0730

1. Requests for audit services are to be made via a *Service Request of Audit Services* (LIC 837). The LIC 837 summarizes the information required for the audit referral. The documentation needed for trust and solvency audit referrals is particularly important as it assists the Audit Section in the development of a pertinent audit plan and priority determination.

2. Referrals without the necessary support documents may be returned to the Regional Office for additional information. Service requests must be completed by Regional Office staff and approved by Regional Office Managers and Program Administrators.

3. Requests for a *Group Residence Locator System* report and corporate certificate of good standing are also to be forwarded using a LIC 837. Completion instructions appear on the back of the LIC 837. Neither the Regional Office Manager nor the Program Administrator approval is necessary for this type of request. These requests may be transmitted to the Audit Section by interoffice mail or fax.

1-0740 PRIORITY CRITERIA FOR AUDITS 1-0740

Requests for audit services are staffed using the priority criteria described below. Referrals of the same priority are assigned based on legal timeframes, number of clients at financial risk and amount of audit time recently provided to the requesting Regional Office.

PRIORITY 1

1. Referrals in which the audit findings, if relevant, will be included in an administrative action.

1-0740 PRIORITY CRITERIA FOR AUDITS (Continued) **1-0740**

2. Referrals in which the Regional Office is planning on taking administrative action due to fiduciary abuse, fraud, or embezzlement greater than $400 (grand theft) perpetrated against facility clients.

3. Referrals in which there are solvency concerns regarding an application for licensure.

4. Requests for service made by Bureau Chiefs, Program Administrators and Legal.

PRIORITY 2

1. Referrals in which Regional Office staff suspect safeguarding, accounting and/or bonding problems that may become the basis of an administrative action.

2. Referrals in which Regional Office staff suspect solvency problems involving licensed facility and the Regional Office has a documented history of problems involving physical plant, inadequate staff and/or insufficient food.

PRIORITY 3

Referrals in which there appear to be trust or solvency noncompliance but the Regional Office does not anticipate administrative action.

1-0750 CASE ACCEPTANCE AND HANDLING 1-0750

The Audit Section attempts to work all requests for audit services. The Audit Section will work with Regional Offices to establish parameters that address specific Regional Office concerns. Should the Audit Section be unable to handle requests within a reasonable amount of time, Regional Offices will be informed and LIC 837s returned.

Upon assignment of an audit referral, a copy of the LIC 837 is returned to the requesting Licensing Program Analyst advising them that the case has been assigned. The status of an audit referral can be obtained by checking the Audit Section's Intranet site and viewing "Audit Inventory."

1-0760 TRUST AUDITS 1-0760

Trust audits determine if licensees or facility staff have committed fiduciary abuse against clients. The Audit Section defines fiduciary abuse as a situation in which any person who cares for or who stands in a position of trust to a dependent or elderly adult, takes, conceals, or uses their money or property for any purpose not in the due and lawful performance of his or her trust.

1-0760 TRUST AUDITS (Continued) **1-0760**

Typically, trust audits are performed when the Regional Office has a strong suspicion or evidence that a licensee is engaged in unacceptable or questionable safeguarding activities. These activities include, but are not limited to, the following:

1. Basic service rates exceed current maximum allowed Supplemental Security Income/State Supplementary Program (SSI/SSP).

2. Inaccurate or improper record keeping of client cash resources.

3. Inappropriate or questionable purchases are being made from client cash resources.

4. Supporting receipts for client purchases are missing.

5. Clients or their responsible persons claim that the clients are not receiving their cash resources.

6. A facility is safeguarding or should be safeguarding client cash resources, and the facility is either not covered by a surety bond or the bond is inadequate.

7. The licensee or staff person is joint owner of a client's bank account.

8. The licensee or staff person has obtained a power of attorney for a client.

9. The licensee or staff person has failed to report gifts exceeding $100, e.g. being named on a client's will, receiving real estate, automobiles, large sums of money, etc.

10. The licensee is commingling client funds with facility funds or facility owner's personal funds.

11. There is strong suspicion that a facility, in ways not specifically identified above, may be violating their fiduciary responsibility.

1-0762 CONVEYANCE OF AUDIT FINDINGS VIA AN AUDIT REPORT (Repealed 7/00) **1-0762**

1-0764 CONVEYANCE OF AUDIT FINDINGS VIA THE LIC 809 PROCESS (Repealed 7/00) **1-0764**

1-0766 CORRECTIVE ACTION ACCOMPANYING AUDIT FINDINGS (Repealed 7/00) **1-0766**

1-0768 APPEAL PROCESS FOR TRUST AUDIT FINDINGS (Repealed 7/00) **1-0768**

1-0770 SOLVENCY AUDITS 1-0770

Solvency audits determine if licensees or applicants have a sound financial plan. In the case of an applicant, the Audit Section defines a sound financial plan as follows:

1. The applicant has access to resources that are adequate to operate the proposed facility for a minimum of three months.

2. The proposed facility is capable of generating a reasonable profit to sustain itself.

If the Regional Office believes there is reasonable doubt that the applicant has an adequate financial plan based on the financial forms and credit report obtained, it is recommended that the Regional Office forward this information to the Audit Section for review.

The purpose of the solvency audit on an existing licensee is to determine whether the licensee has, and is capable of maintaining, a financial plan which ensures resources necessary to meet operating costs for care and supervision of clients. Typically solvency audits will only be performed if the Regional Office has a documented history, including *Facility Evaluation Reports* (LIC 809s), of problems involving physical plant, inadequate staff, insufficient food, etc. Some indications of financial problems are outlined below:

1. Lack of adequate food supplies.

2. Specific services not being provided as agreed upon in the admission agreement.

3. Lack of client supervision.

4. Limited access to essential utilities such as water, air conditioning and heat.

5. Client relocation refunds late or not paid.

6. Checks returned “Account Closed.”

7. Checks returned “Not Sufficient Funds”.

8. Non-payment of property or payroll taxes.

9. Government or bank seizure of assets.

10. Notice of foreclosure.

11. Inside tips from employees or former employees with regard to the licensee’s financial problems.

12. Complaints from clients or members of their families regarding lack of food and services.

1-0770 SOLVENCY AUDITS (Continued) **1-0770**

13. Complaints from commercial vendors about non-payment or late payment of bills.

14. Evidence of financial problems not specifically identified above that indicate that a licensee may not have an adequate financial plan.

1-0780 CONVEYANCE OF AUDIT FINDINGS 1-0780

1. Upon completion of a trust or solvency audit, the Audit Section conveys the audit findings to the licensee/auditee via certified mail. Included in the certified mailing is a notice advising the licensee to provide, within 15 days of receipt, any additional information they believe could impact the draft audit findings. Based on the licensee's input, the draft findings may be amended.

2. After the licensee has been provided 15 days to respond to the audit findings, copies of the audit package are forwarded to the Central Operations Branch Chief, Policy and Audit Bureau Chief, Program Administrator, Regional Manager, Licensing Program Manager and the Licensing Program Analyst. A copy is also forwarded to Legal if an administrative case is ongoing. An internal memo is included in the audit package recommending that the audit findings be cited by the Regional Office via *a Facility Evaluation Report* (LIC 809). The LIC 809 referencing the audit findings is delivered to the licensee by the Licensing Program Analyst. Auditors will accompany the Licensing Program Analyst if their presence is determined to be necessary by the Audit Manager and the Program Administrator.

3. Audit findings are prepared in conformance with statutes and regulations requiring client confidentiality. Client names are referenced by number in the audit findings, which is accompanied by a *Confidential Names* (LIC 811) list.

4. Appeal rights for audit findings issued via LIC 809 are the same as other LIC 809 citations except that the auditor and/or Audit Manager will be present at the appeal meeting to support the audit findings and address licensee questions and objections, if any.

5. When audit findings are only regulatory in nature with no monetary differences, the corrective action instructions are normally straightforward and follow-up is provided by the Regional Office. When audit findings involve monetary differences, follow-up is the responsibility of the assigned auditor. It is the auditor's responsibility to keep Regional Office staff informed regarding the status of follow-up activities involving monetary differences.

1-0790 CORRECTIVE ACTION ASSOCIATED WITH AUDIT FINDINGS 1-0790

At the conclusion of each audit finding, specific actions are outlined advising the licensee how to correct the particular noncompliance.

The Audit Section facilitates the recovery of all client funds as identified in the audit findings. Reimbursement made by licensees or surety bond companies is required to be in the form of a cashier's check made payable in the name of the affected client or in the name of a responsible person or authorized representative on behalf of the affected client. All client restitution checks are sent to the address listed below:

Department of Social Services
Community Care Licensing Division
744 P Street, MS 19-49
Sacramento, CA 95814
Attention: Audit Manager

If a licensee fails to make the restitution required per the audit findings, the Audit Section will submit a claim against the licensee's surety bond.

The Audit Section maintains records to track the return of all funds recovered on behalf of facility clients. Once all audit findings have been corrected and recovered funds distributed, an internal memo is sent notifying involved Licensing personnel that the audit is closed.

1-1000 ADMINISTRATIVE ACTIONS OR OTHER LEGAL ACTIONS 1-1000

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

Administrative Action refers to the steps necessary to present a case in an Administrative Hearing. Such hearings may lead to the revocation of a license or the denial of an initial license. Hearings can also resolve whether employees or other persons should be excluded from facilities. The Licensing Program Analyst plays an essential role in the process as the Licensing Program Analyst has firsthand knowledge of the facility operation. The Licensing Program Analyst's firsthand knowledge and documentation will allow for the collection of necessary documentation and facts to successfully present a violations case. Violations which may form the basis of an Administrative Action are included in the case assessment indicators found in Reference Material, Enforcement Actions, Section 1-0110.

The role of the Legal Division is to provide legal support and consultation to the Regional Office/county staff, the Statewide Program Office, the Assistant Program Administrator or Program Administrator and the Deputy Director. The Legal Division represents the Department in Administrative Actions.

The Regional Office (and county staff with their assigned attorneys) should be routinely involved with the Licensing Office's assigned Legal Consultant in discussion of cases, which may warrant some type of Administrative Action.

1-1000 ADMINISTRATIVE ACTIONS OR OTHER LEGAL ACTIONS 1-1000
(Continued)

Planning for Impact on Clients:

Administrative Action or other legal actions against operating facilities, whether licensed or unlicensed, may result in the need to relocate clients. While the Department is not a placement agency and has no power to forcibly relocate clients, the Licensing Agency is responsible for planning and coordinating the relocation process. When clients are relocated, appropriate advance notice should be provided to clients, placement agencies, authorized representatives, and responsible persons. The Deputy Director or designee will determine the need for advance notice and whether to include appropriate documents with the notice (e.g., citation reports). In determining the need for advance notice, the Deputy Director or designee should consider the size of the facility and the specific circumstances, including, but not limited to, whether or not clients have responsible parties who can assist in placement, health and safety concerns (and specific health conditions of clients), the number of clients receiving Supplemental Security Income (SSI) and the involvement of local agencies. Balance these considerations with the need to maintain confidentiality of an impending facility closure. Regarding licensed facilities, Regional Managers shall ensure that a Department Facility Closure Plan is developed and implemented pursuant to Reference Material, Enforcement Actions, Section 1-1190. The Department Facility Closure Plan provides instructions for notification to clients, placement agencies and responsible persons, as well as procedures for client relocation.

Client information (e.g., physician's record, admission agreement, responsible party, Medi-Cal, Medicare, SSI information, pharmacy, etc.) contains essential identifying information necessary to relocate clients. Regarding facilities undergoing Administrative Action, whenever the Licensing Program Analyst discovers these client records are not available, all efforts should be made to locate the necessary information. If needed, the Licensing Program Analyst should seek assistance from persons associated with the client, including and not limited to the Investigations Bureau, the Public Guardian, payee services, or the website of the Department of Health Care Services to access or locate such records and information.

Administrative Actions and other legal actions which may lead to Client Relocation:

There are several types of possible Administrative Actions. The various options are described in Reference Material, Enforcement Actions, Section 1-1010. Not all Administrative Actions will result in facility closure; however, when a facility is closed, clients will need to be relocated. The following Administrative Actions may result in facility closure:

- Temporary Suspension Order
- Telephonic Temporary Suspension Order
- Denial of an application when the facility is in operation
- Order to Revoke Certificate of Approval for Certified Family Home (Regional Offices to follow the same procedures for a Temporary Suspension Order)

1-1000 ADMINISTRATIVE ACTIONS OR OTHER LEGAL ACTIONS 1-1000
(Continued)

- Denial of an application for which a currently operating facility has been issued a Provisional License
- Legal actions taken if an unlicensed facility does not pursue the licensing process as directed by the Department
- Decision and Order revoking an operating facility's license
- Decision and Order resulting from a Stipulated Agreement
- Decision and Order revoking an operating facility's Probationary License

In addition to the Administrative Actions listed above, immediate client relocation may be required when a Licensing Program Analyst or other representative of the Licensing Agency identifies a threat so severe that they must call emergency personnel while that licensing representative is at the facility. Examples include abandonment of a facility by the licensee, staff leaving clients without care and supervision, or hazardous physical plant conditions which place the health and safety of clients in jeopardy.

Actions taken by the Licensing Agency or the Department may result in client relocation. For instance, revocation of a license is a direct action taken by the Licensing Agency that may result in client relocation. Referral of an unlicensed situation to the local District Attorney or to the Attorney General is an indirect action that begins a process that may result in relocation of clients as well. In both situations, the Licensing Office will prepare a Department Facility Closure Plan and provide appropriate notifications to relatives and placement agencies.

1-1010 ADMINISTRATIVE ACTION AND OTHER LEGAL OPTIONS 1-1010

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

After the Licensing Office has utilized all available and appropriate enforcement actions, and the licensee is still failing to comply, Administrative Action is the next step in the process. There are no hard and fast rules as to what action is appropriate in a given case, and it is important to assess each case individually. What follows is a list of the primary options available to you in dealing with a non-compliant facility. Each option should be considered in light of the assessment factors found in Reference Material, Enforcement Actions, Section 1-0110.

Attorney Review. In cases where the Licensing Program Analyst, Licensing Program Manager and Regional Manager are unsure if the problems with a licensee are serious enough to warrant revocation of the license, or if you are unsure if the evidence you have is sufficient, or if there are other factors which make you unsure of the appropriateness of Administrative Action, discuss the case with the Licensing Office's assigned Legal Consultant. If there is still question as to what type of Administrative Action should be taken, if any, the case may be referred for the action you think is appropriate and "Attorney Review".

1-1010 ADMINISTRATIVE ACTION AND OTHER LEGAL OPTIONS 1-1010
(Continued)

Here are some of the most commonly used but <u>incorrect</u> reasons for not referring a case for possible Administrative Action:

- "I'm not a 100 percent sure that the complaint is substantiated."
- "The District Attorney did not file charges," or "Law enforcement dropped the case," or "The District Attorney hasn't decided yet whether or not to file charges."
- "It's the alleged victim's word against the licensee's."
- "There are no other victims or witnesses."
- "Hearsay evidence is all we have besides the testimony of the alleged victim."

While each of these circumstances should be considered, none of them should be used as a reason not to refer a case for possible Administrative Action. Administrative Actions are often successful even in cases where no criminal charges are filed, where there is only one victim/witness, where the licensee denies the allegations, and where some of the evidence is hearsay.

The Assistant Program Administrator or Program Administrator may be able to determine what action is warranted under the circumstances. If not, the assigned Licensing Attorney will review the package and will advise the Regional Manager and Assistant Program Administrator or Program Administrator about what action he or she considers appropriate. If the problems are serious and the evidence sufficient, the Legal Division will prepare a Statement of Issues or an Accusation, and perhaps prepare a Temporary Suspension Order. If the problems appear solvable, or if the problems are serious but the evidence is weak, the Licensing Attorney may suggest that the Licensing Office should schedule a Noncompliance Conference or, in some cases, take no action at all.

In any case where the Regional Manager and the Assistant Program Administrator or the Program Administrator strongly disagree with the assessment of the Legal Division on a particular case, the case will be scheduled for decision by the Deputy Director for the Community Care Licensing Division. The Licensing Office, through the Program Office and the Legal Division will offer their respective opinions on the case and a final decision will be made by the Deputy Director.

Denial of Application: No Care Being Provided. When a person or organization cannot or will not comply with the requirements of statute and regulations before licensure, and the applicant has been advised of the deficiencies but has failed to correct them, the initial application should be denied. The denial letter should clearly identify the reasons for denial.

1-1010 ADMINISTRATIVE ACTION AND OTHER LEGAL OPTIONS 1-1010
(Continued)

In addition, if the Caregiver Background Check Bureau or county denies a criminal record exemption or receives notice of a conviction of a non-exemptible crime for an applicant or spouse or dependent adult who will reside in the facility, the Licensing Office will deny the application. The denial notice will indicate that both the criminal record exemption and the application are denied. (See Reference Material, Background Check Procedures, Sections 7-1740 and 7-1760.)

An applicant has 15 days to appeal the denial of the application and exemption (if included.) The applicant may not operate the facility pending the hearing on the appeal.

Denial of Application: Care Currently Provided. In cases where a facility is operating without a license and continues to operate after the application for a license has been denied, discuss what options to pursue with the Licensing Office's assigned Legal Consultant. The only relevant Administrative Action is a Statement of Issues for denial of the license, which may be pursued for the record even if the applicant did not appeal. Two types of non-administrative legal action may be considered, either alone or together. The first is an injunction proceeding in Superior Court. (See Reference Material, Enforcement Actions, Section 1-1130 for requesting multiple actions. Also see Injunctions and Other Actions against Unlicensed Facilities below.) Since issuance of an injunction or other legal process to stop operations may result in facility closure and the need to relocate clients, a Facility Closure Plan must be developed. Refer to Reference Material, Enforcement Actions, Section 1-1190 for procedures. The second type of non-administrative legal action to consider is a referral for criminal prosecution by the county district attorney, or other local prosecutors for misdemeanor violation of the licensing statute(s) and/or for unfair competition or another crime. If the prosecutor agrees—which is more likely to occur if the basis for denial was abuse or other conduct suggesting a substantial risk—criminal prosecution is likely to be more effective than an injunction. The applicant was already warned in writing that further operation is illegal, but chose to operate in defiance of the law.

License Revocation. When a licensee commits serious regulation violations, or engages in criminal conduct, or repeatedly violates licensing regulations despite multiple citations, Plans of Corrections, Civil Penalties, Informal Meetings, a Noncompliance Conference or Compliance Conference, the local Licensing Office may choose to recommend that the provider's license be revoked.

In addition, if the Caregiver Background Check Bureau or county denies a criminal record exemption or receives notice of a conviction of a non-exemptible crime for a licensee or spouse or dependent adult who resides in the facility, the license must be revoked. (See Reference Material, Background Check Procedures, Sections 7-1740 and 7-1820.)

1-1010 ADMINISTRATIVE ACTION AND OTHER LEGAL OPTIONS 1-1010
(Continued)

In the absence of a Temporary Suspension Order, the licensee may continue to operate a facility after an Accusation has been served. The facility may continue to operate until a Final Decision and Order revoking the license is adopted by the California Department of Social Services.

If the facility continues to operate, a Facility Closure Plan must be developed at the time the office is notified by the Legal Division that a proposed Decision and Order that would uphold the revocation request, has been received from the Office of Administrative Hearings. The Legal Division will also notify the Licensing Office at the time the Decision and Order has been approved. The Decision and Order will be effective no earlier than ten days from the date of adoption.

Expedited Accusation. When the Regional Manager, Assistant Program Administrator or Program Administrator have determined that a case is urgent, but does not meet Temporary Suspension Order criteria, an expedited Accusation may be appropriate.

An expedited Accusation means that the Accusation will be drafted by the assigned attorney as quickly as possible (a priority after Temporary Suspension Orders and employee exclusions). The hearing, however will be scheduled with the Office of Administrative Hearings within the normal time frames. An expedited Accusation will not result in a more timely hearing since the respondent may choose to waive normal hearing time frames.

Temporary Suspension Order. When a licensee, or other person in a facility has engaged in physical or sexual abuse of clients, or has seriously neglected clients in care, or has been convicted of a non-exemptible crime or a violent felony or misdemeanor, or has so poorly supervised the clients in care that there is a substantial risk to their health, welfare, or safety, a Temporary Suspension Order may be warranted. (See Reference Material, Enforcement Actions, Section 1-1205.) As the impact of a Temporary Suspension Order is abrupt, the decision to serve a Temporary Suspension Order is made only after careful review by the Community Care Licensing Division Assistant Program Administrator or Program Administrator or delegate and Deputy Director, and by the Legal Division. The Deputy Director signs this document after briefing the Director. All Temporary Suspension Orders are also approved by the Attorney General.

The Temporary Suspension Order is an extreme measure because it will result in the immediate closure of a facility and the need for clients to relocate, and will have an immediate adverse effect on the livelihood of the licensee.

The “telephone Temporary Suspension Order” method of referring a case to the Legal Division is available for expedited legal services or investigative consultation in cases involving major and immediate risks to clients in care. See Reference Material, Enforcement Actions, Section 1-1210.

1-1010 ADMINISTRATIVE ACTION AND OTHER LEGAL OPTIONS 1-1010
(Continued)

For any Temporary Suspension Order that will result in the need for clients to relocate, a Facility Closure Plan must be developed. In addition, advance notice must be provided to the Assistant Program Administrator or Program Administrator or delegate as soon as it is expected that this is the likely action to be requested.

There are special interim hearing procedures required by the Community Care Facility Act regarding Temporary Suspension Orders served on a community care facility (not Child Care Centers or Residential Care Facilities for the Elderly). See Reference Material, Enforcement Actions, Section 1-1215.

Other Actions against Unlicensed Facilities, Including Facilities with a Suspended or Revoked License.

An injunction is an order issued by a Superior Court prohibiting a person or organization from operating a facility without a license. Superior Court injunction proceedings or criminal prosecution should be considered in the following unlicensed operation situations, including, but not limited to: (1) A failure or refusal to apply or cease operation after notice, (2) A failure or refusal to cease operation after application denial, (3) Operation after service of a Temporary Suspension Order, and (4) Operation after service of a Decision and Order or a Stipulation and Order revoking the license.

1. Failure or Refusal to Cease Operation After Notice Has Been Served or Where the License Application Has Been Denied:

If the Licensing Office receives a complaint about, or learns of, an operating unlicensed facility the Licensing Program Analyst must investigate and confirm the unlicensed operation**.** During this inspection the Licensing Program Analyst should attempt to secure names of clients in care and their responsible parties. The Licensing Program Analyst shall give or mail to the operator the Notice of Operation in Violation of Law. Within one working day, the Licensing Program Analyst will send copies of the Notice of Operation in Violation of Law to any contact persons identified and to local Adult Protective Services and/or the Long Term Care Ombudsman (if an adult facility) or to the local Resource and Referral Agency (if a child care facility), along with the contact letter developed for this purpose. If the unlicensed operator does not then apply for a license, or if the application is denied and the unlicensed operations continue, discuss the matter with the Licensing Office's assigned Legal Consultant. As discussed above in this section (see **Denial of Application: Care Currently Provided**), a request for criminal prosecution may also be considered.

1-1010 ADMINISTRATIVE ACTION AND OTHER LEGAL OPTIONS 1-1010
(Continued)

2. Failure or Refusal to Cease Operation After Temporary Suspension Order or Final Decision and Order Revoking License Has Been Served:

If a facility continues to operate after a Temporary Suspension Order or a final Decision and Order or a Stipulation and Order revoking the license has been served and has taken effect, contact the Licensing Attorney handling the case and/or the Licensing Office's assigned Legal Consultant immediately.

Operation after a Temporary Suspension Order or final order of revocation may be particularly compelling circumstances for the criminal prosecution approach, for two reasons: (1) It has been or can be proved that the facility is dangerous, and (2) The facility operator was already warned in writing that further operation is illegal, but chose to operate in defiance of the law.

Regional Office staff should follow referral procedures to Investigations Branch pertaining to unlicensed operations. Refer to Reference Material, Enforcement Actions, Section 1-0640, Section 1-1190 and Section 1-1200. A local Licensing Office should discuss with the Licensing Office's assigned Legal Consultant whether to ask a local prosecutor (district attorney, county counsel or city attorney) to seek an injunction against the facility. If this request is rejected, a Statement of Facts requesting an injunction should be prepared. The attorney assigned by the Legal Division will ask the Attorney General's office to seek the injunction. Contact the Licensing Office's assigned Legal Consultant regarding questions about injunctions. Regardless of the process used, further actions may result in facility closure and relocation of clients. If so, a Facility Closure Plan must be developed.

Administrative Actions against Other Persons. Administrative Actions against persons who are not licensees, applicants or unlicensed facility operators are discussed in Reference Material, Enforcement Actions, Section 1-1400. Employees are discussed in Reference Material, Enforcement Actions, Section 1-1410; Certified Family Home applicants and certificate of approval holders in Reference Material, Enforcement Actions, Section 1-1430; and other adults in a facility in Reference Material, Enforcement Actions, Section 1-1450.

1-1020 EVIDENCE AND DOCUMENTATION 1-1020

The Licensing Program Analyst gathers the evidence necessary to refer a case for Administrative Action. (See Reference Material, Complaints, Section 3-2615.) The evidence is presented to the Legal Division in the form of licensing documents, medical and police reports, photographs, tapes, etc. The section below contains a brief discussion of the kinds of evidence which, if available, should be gathered and presented with the Statement of Facts, which is discussed in Reference Material, Enforcement Actions, Sections 1-1100 and 1-1130.

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

EYEWITNESS OBSERVATIONS

The best evidence in a case often comes from a reliable, believable eyewitness. An eyewitness testifies to his or her observation. Observations are what the witness actually saw, heard, or otherwise perceived with his or her senses. Witnesses may be victims, facility staff members, parents, relatives, other clients, police officers, doctors, placement agency staff members, and even the licensees themselves. The Licensing Program Analyst is often a key witness in licensing cases. What the Licensing Program Analyst observes in the facility may be the most important facts in the case. Examples of what the Licensing Program Analyst observes include the physical plant, its cleanliness and layout; the kind and amount of food service; medications and their storage and handling; the physical condition and number of people in the facility; and the condition and kind of facility records.

Other observations the Licensing Program Analyst may make and document are, for example, conversations with clients, and sounds of clients crying, screaming or laughing that may lead to the discovery of other clients or problems in the facility.

The Licensing Program Analyst often talks with the facility staff, the licensee, parents or relatives, clients, and others who are involved with the facility. (See Reference Material, Complaints, Section 3-2620.) The things these people say about what they saw or experienced or what they heard someone else say (hearsay) may be crucial evidence in the legal action.

They should be written down accurately, verbatim if possible. When words are written down verbatim, quotation marks should be used around the exact words that were said. It is particularly important to write down exact remarks made by the licensee or by staff members, or that what an eyewitness says are exact words used by a licensee or staff member.

Do not think that you should omit "hearsay." Hearsay can be very useful in licensing cases. There are three important things to remember about hearsay: 1) Write it down accurately, 2) identify who reportedly said it, and 3) identify who reported it. (See Reference Material, Complaints, Section 3-2615 for additional information regarding hearsay.)

DOCUMENTING WITNESS INTERVIEWS

When the Licensing Program Analyst interviews a witness, the information is recorded on a separate Detail Supportive Information (LIC 812) form for each witness interviewed. A declaration from a witness is not a substitute for the Licensing Program Analyst's notes of an interview on the Detail Supportive Information (LIC 812) form. Include at least the following information about the witness in the report:

- Is the witness willing to testify at an Administrative Hearing?

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

- Name and address, both correctly spelled. ALL current telephone numbers: home, work, cell, pager, message. In the case of a witness who moves often, may be relocating, has no phone or otherwise may be hard to find, get information about a contact person who will know how to reach the witness.

- Relationship to the facility: e.g., staff member, neighbor, parent, or client.

- Willingness to testify at a hearing and information regarding any travel or relocation plans.

- Notes about mental capacity, age, or other conditions that might affect the witness's ability to testify. Include notes regarding any known history that might affect the witness's credibility, such as a history of making similar allegations. Ultimately, the Administrative Law Judge decides if a witness is qualified to testify. The Licensing Program Analyst's notes, however, will help the attorney to know what to expect from the witness.

- What the witness saw, heard, or otherwise perceived. Include examples and as many details as possible.

Additional Suggestions for Witness Interviews are:

- Let the witness do the talking and write down accurately what is said. Do **NOT** put words in the witness's mouth.

- If the witness tells you what someone else said (hearsay), identify the speaker and ask the witness to try to recall the exact words that he or she heard. See discussion above regarding the importance of documenting exact words with quotation marks.

Do **NOT** write on any report that there is "insufficient evidence." This is a legal conclusion that may not be correct and that may be harmful to the case. Do **NOT** interject comments or your personal opinions of the witness's credibility. (See also Reference Material, Complaints, Section 3-2620.)

Declarations. Declarations (LIC 855) can be valuable tools in proving a case when used appropriately. (See Reference Material, Documentation, Section 3-3520.) Declarations are valuable when the witness may become unavailable. Examples include witnesses who are elderly, infirm, seriously ill, planning to move out of state, or reluctant to testify. A declaration is also valuable if the witness is providing useful information that he or she may later retract as where a licensee or person allied with a licensee admits that an injury was inflicted by the licensee or by a member of the household or staff.

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

The Licensing Program Analyst should conduct a directed interview of the witness in order to develop the information to be included in the declaration. The directed interview should cover exactly **what** was seen or heard, **who** was present, **when** the events happened (or time frames if the exact dates are unknown), **where** and **how** the events occurred. If the witness can provide the exact words of any statements that were made, quotation marks should be used in the notes of the interview and then in the declaration. The interview should cover who made the statements, and to whom. The witness's relationship (client, neighbor) to the facility should be included. The Licensing Program Analyst should then inform the witness that he or she is preparing a declaration that he or she would like the witness to sign. The Licensing Program Analyst should ask the witness any questions that arise in the Licensing Program Analyst's mind while preparing the declaration in order to clarify points or to provide supplemental information or explanations.

The declaration should include as many details as possible and should be completed as soon after the event as possible, when the witness's memory is fresh. For that reason, the Licensing Program Analyst should utilize the Declaration (LIC 855) form for any witness interview. The declaration should be obtained at the time the witness is interviewed. If no forms are available, use blank paper rather than lose an opportunity to obtain the declaration.

The Licensing Program Analyst should go over the declaration with the witness to make sure that it accurately reflects the witness's observations, etc. Either the Licensing Program Analyst or the witness should make appropriate additions and corrections. When the witness agrees that the declaration is true and correct, the Licensing Program Analyst should ask the witness to sign and date the declaration. The declaration should not be mailed or left with the witness for the witness to complete and return.

The Licensing Program Analyst's documentation for the facility file should state that 1) the Licensing Program Analyst went over the declaration with the witness; 2) the Licensing Program Analyst made changes indicated by the witness or the witness made changes; and 3) the witness said the declaration was true and correct before signing.

If a declaration form is not available and a blank sheet of paper is used, the Licensing Program Analyst should write, "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct," before the date and signature. (It is unlikely that a witness will object to the word "declare" as some people might to the word "swear," but if a witness does object, offer the word "certify" instead.)

If a Temporary Suspension Order is recommended, the Licensing Program Analyst must be prepared to obtain declarations from percipient witnesses (witnesses who have first-hand knowledge of the important facts, not everyone who is interviewed) concerning the facts.

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

However, obtaining the declarations must not delay the Licensing Program Analyst's initial recommendation for a Temporary Suspension Order if the Licensing Program Analyst believes that sufficient facts warrant the Department's issuance of a Temporary Suspension Order. The issue whether declarations are needed can be discussed with the attorney assigned to the case. (See Reference Material, Enforcement Actions, Section 1-1215.)

Do not delay sending a case to the Legal Division because the Licensing Program Analyst is having trouble getting someone to complete a declaration. A declaration is not a substitute for a complete Detail Supportive Information (LIC 812) report concerning the witness interview.

DOCUMENTATION – IN GENERAL

Documentation is the record of the observed facts. The more the Licensing Program Analyst records and the sooner after observation that the Licensing Program Analyst writes down what he or she saw or heard, the better. Good legible notes are essential aids to memory and are useful in at least two ways in a legal action: 1) in the preparation of a full and accurate field report [Facility Evaluation Report (LIC 809), Complaint Investigation Report (LIC 9099) and Detail Supportive Information (LIC 812)]; and 2) in preparing the Licensing Program Analyst's own testimony for the hearing.

The Licensing Program Analyst prepares and gathers the documentation of the evidence and sends it with the Statement of Facts for eventual presentation to the Legal Division. All copies should be clear and readable. The documentation sent to the Legal Division may have to be presented as proof at the hearing. The attorney and the Administrative Law Judge have to be able to read the documents sent. (See Reference Material, Complaints, Sections 3-2615, 3-2315 and 3-2200; and Reference Material, Documentation, Sections 3-3125, 3-3130, 3-3135, 3-3140 and 3-3200.)

What Documents from the Facility File Should Be Included? What Additional Documents Should Be Provided?

The primary goal is to provide all documents (and other items of evidence) that the assigned attorney may need. The secondary goal is not to send large amounts of unnecessary documents. Use the following guidelines to make decisions best suited to the case at hand:

- If the file is thin, provide all documents.
- In the case of a Statement of Facts for an exclusion action, include only those documents that concern the employee in question, and his or her alleged acts or omissions.

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

- Omit older documents unless they have special relevance. For most facilities and facility types, this generally means more than three years old. For Family Child Care Homes and other facilities without extensive documentation, five years is generally more appropriate. Shorter or longer periods may be appropriate in particular cases. The following are examples of older documents that may be important for any facility:

    - A prior substantiated or inconclusive complaint that is similar to a new substantiated or inconclusive complaint.

    - A pattern and practice of being in violation of the same or similar requirements.

    - Noncompliance conferences and informal meetings.

    - Any questionable death or possibly inflicted serious injury.

    - Documents that may shed light on current issues (e.g., who resided in a facility located in a private home on previous dates, previous evidence of dishonesty).

- Omit voluminous documents that are irrelevant to the case, such as sample menus submitted with an application or incident reports that are unconnected to any cited violation or other issue in the case.

- Omit duplicate copies of the same document.

- Remove Post-It notes or other obstructions before copying documents.

- Provide new Licensing Information System printouts (on the licensee/applicant, or in the case of an exclusion, on the employee/individual), even if the printout indicates no other associations.

- Check other associations to see if the person is still "active" and include these printouts. Also include older Licensing Information System printouts from the file.

- If there is an administrator, check Licensing Information System for administrator certification, and include the printout.

- Include relevant documents from other parts of Community Care Licensing Division, including but not limited to, Caregiver Background Check Bureau, Investigations Branch, Administrator Certification Section, TrustLine, Audits, and/or other licensing offices.

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

- The complete investigation report, including exhibits and attachments, should be included. If the exhibits are not included in the report received by the Regional Office, they should be obtained if the investigation report is the total or partial basis for the Statement of Facts.

- Include any appeal letters, including the date received (this may mean copying the back side of the appeal for the date-stamp).

- **Children's Residential Statement of Facts** should include a placement history at least for children who are known victims or witnesses or are potential witnesses (name, date of birth, date placed in facility, date removed). This helps determine time periods for allegations, helps identify other children the attorney may want interviewed, and may assist in locating witnesses. If a complete placement history for all children who have been placed in the facility is conveniently available, especially for a facility of small capacity or brief licensure, include the complete placement history. Also provide the name, address and telephone number of the current placement worker for child witnesses.

  If the child is no longer a dependent, provide the name, address and telephone number of the adult(s) last known to have custody. If a child has been confidentially adopted, provide information on the adoption worker so the Legal Division can contact the worker and ask the worker to find out if the family is willing to be identified to us.

SPECIFIC TYPES OF DOCUMENTS

The documents listed below can sometimes be used as actual proof that an event occurred and are often presented to the Administrative Law Judge at the hearing. (See Reference Material, Complaints, Section 3-2615.)

The Licensing Program Analyst will not obtain original police and/or medical records, as the originals are maintained in the police department, hospital or doctor's files. The Licensing Program Analyst should obtain a legible copy, preferably certified, of such documents.

NOTE: For community care facilities, if a Temporary Suspension Order is recommended, declarations may be required in addition to pertinent documents mentioned in this section. (See Reference Material, Enforcement Actions, Section 1-1215.)

NOTE: **Do not delay the referral of a case while records are being obtained**. Simply note on the case transmittal document that the records have been requested. For Temporary Suspension Orders of community care facilities, do not delay requesting a Temporary Suspension Order because you are attempting to obtain declarations if you otherwise have sufficient facts that warrant the Department's issuance of a Temporary Suspension Order.

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

Hospital and medical records. The medical records should be obtained whenever an incident in a facility has involved medical treatment or consultation. Physicians' offices and hospitals require a written authorization for release of information from the patient or responsible person or a subpoena duces tecum before they will release copies of records. A Subpoena Duces Tecum (LIC 967) is described in Reference Material, Enforcement Actions, Section 1-1600.

A client, parent, or other responsible person will usually cooperate with a Licensing Program Analyst by signing the release. Make sure the release is dated. Obtain the records as soon after the release is signed as possible. Some hospitals will not honor releases more than three months after they are signed. Include the release in the Statement of Facts, and keep a copy of the release in the licensing file. A subpoena duces tecum will need to be used if a medical release is not obtained.

Juvenile Court Records. If it becomes necessary to obtain copies of any juvenile court records, California Department of Social Services legal staff or the Community Care Licensing Division, Investigations Branch, will handle any request for such information. All requests should be made in accordance with the authority granted in the Welfare and Institutions Code Section 827.

Certified judgments of conviction and dockets. Rap sheets are not enough to prove that a person has been convicted of a crime. When it is a pertinent fact in the case that a person has been convicted, a certified copy of the judgment of conviction must be obtained from the Clerk of the court where the person was convicted. This court is identified on the rap sheet.

The Licensing Office should also request a certified copy of the complaint and court docket, if available, for the same conviction. The docket is a log of the court events in a particular case. It often contains helpful information such as the names of witnesses at the trial, terms of probation, and probation reports.

Call the Clerk of the court to obtain certified copies of the judgments and dockets. Identify yourself as a Licensing Program Analyst for a Licensing Agency. The Clerk should provide certified copies without charge, as State agencies are exempt from the copying and certification fees. Some courts may require a written request.

When certified court documents are received, send the actual certified documents with the Statement of Facts and keep copies in the file. If a conviction occurred many years ago, the county clerk may have destroyed the record of conviction. In such cases where obtaining this record is necessary for the case, contact the Investigations Branch. County staff should contact their local District Attorney. They may be able to obtain the complaint, docket, and judgment of conviction from the Department of Justice, Bureau of Criminal Identification Division, or from the Department of Corrections, if the person in question is or was in prison.

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

Do not contact the Department of Justice or Corrections directly. In addition, the person in question can be confronted with the information in his or her rap sheet and be asked to explain the convictions. He or she will often admit the offense(s), and the admission often can be used in lieu of a certified copy of the judgment of conviction.

Police Reports, Child Abuse Reports, Regional Center, Mental Health, and other Agency Reports. Copies of these reports can usually be obtained when the Licensing Program Analyst identifies himself or herself as an investigating officer from licensing. For Child Abuse Reports, Penal Code Section 11167 (c) allows the Licensing Agency to obtain abuse reports during the course of an investigation. Contact the Legal Division if you need assistance.

Facility Records. The Licensing Program Analyst is authorized by regulations to inspect facility records. Refer to California Code of Regulations, Title 22, Sections 102391(d), 101200(c), 80044, 87755 and 89244. The authority should be used to read and copy the financial, employee, medical, or other records kept by the facility. These records can be used to illustrate or prove a violation.

Photographs. It is true that pictures are worth a thousand words. They are convincing, undeniable records of burns, bruises, and other injuries. They also prove that unsanitary conditions and filth can and do exist in facilities. Make sure to identify the subject of each photo, who took the photo, when it was taken, and who was present when it was taken. To preserve the integrity of the evidence in a hearing, do not write on the front of photographs, or any other exhibits. Use a Facility Photography Report (LIC 813), a separate piece of paper or a sticker on the back of the picture for identification purposes. (See Reference Material, Documentation, Section 3-3510.)

The Licensing Program Analyst may take pictures of conditions at a facility over the licensee's objection. However, the Licensing Program Analyst should never take any action that would jeopardize his/her own health and safety. It is a Licensing Program Analyst's duty to observe, assess and document conditions in a facility. Photographs are merely one method of recording those observations.

In a physical abuse case the Licensing Program Analyst may, after requesting the victim's permission, take pictures of bruises appearing on the victim's face, neck, lower legs, arms or other visible parts of the body. If the injuries are located on parts of the body normally covered by clothing (in keeping with conventional propriety) they may be photographed only to the extent the victim feels comfortable and only with his/her consent or that of his/her parents, conservator or authorized representative, who should be present.

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

Do not remove bandages or dressings. Under no circumstances should the Licensing Program Analyst photograph those personal parts of the body traditionally covered by underwear/swimwear, i.e., genital areas or other parts of the body regarded as private. If the victim or parents object, do not take any photographs. (See Reference Material, Complaints, Section 3-2610 and Reference Material, Documentation, Section 3-3510.)

The quality and timeliness of photographs is often an issue. Did a parent, police officer, hospital staff or anyone already take photographs? Are they good photographs? Has the injury healed significantly? If there are no good photographs and the injury is still visible, photographs may still be useful along with information describing how the injury used to look. Digital photos offer the advantage that you can get a good idea of how they will look and decide whether to take more, perhaps with different lighting. Consider asking medical or law enforcement personnel to photograph injuries if the victim would be less embarrassed and the photographs will still be taken promptly.

Recordings. When the Licensing Program Analyst learns that a police detective, therapist, or another person has made a videotape or audiotape, try to obtain a copy. If the tape cannot be obtained, a note should be made in the file as to who has the tape.

Unless prior approval has been obtained from the Deputy Director through the Program Administrator or County Licensing Supervisor, do not use video recording equipment to record interviews and/or evidence. While use of audiotape equipment is not prohibited, it shall only be used with the approval from the Regional Manager. This will ensure that any legal technicalities will not be overlooked when recording the statements and interviews. For example, Penal Code Section 632 makes it a crime to record a confidential communication without the consent of all parties to the communication, by means of any electronic amplifying or recording device. This is the case whether the conversation is carried on face-to-face or over the telephone.

Physical Evidence. In some cases, objects are important evidence. An example is any object used in physically abusing or corporally punishing a child or client in care. The Licensing Program Analyst should take photographs of the object from different angles to ensure a complete and accurate depiction of the object. (See Reference Material, Documentation, Section 3-3510.)

The Licensing Program Analyst may remove physical evidence provided the written consent of the licensee is obtained and a receipt clearly identifying the object to be removed is issued.

1-1020 EVIDENCE AND DOCUMENTATION (Continued) **1-1020**

Unless written consent is given by the licensee and a receipt issued, the Licensing Program Analyst should not remove the object. If the object is one which should be tested (e.g., clothing for presence of semen or blood, powder or other substance to confirm presence of illicit drugs), and the licensee refuses to grant consent releasing the object to the custody of the Licensing Program Analyst, the Licensing Program Analyst should consult with the Regional Manager and the Legal Division to determine other options, such as securing the assistance of the district attorney's or the attorney general's office in obtaining an inspection warrant authorizing the search for and seizure of the object. (See Reference Material, Enforcement Actions, Section 1-0030.) Given that consent or a warrant may not be feasible, obtaining photographs of the object is essential.

If the Licensing Program Analyst does obtain possession of physical evidence, it is important to keep the evidence in a secure location at the licensing office and to otherwise keep track of the chain of custody of the object until the case is completed.

(For more information regarding conducting interviews and collecting evidence, refer to Reference Material, Complaints, Sections 3-2615 through 3-2615.3, and Sections 3-2620 through 3-2620.3.)

For information regarding documents received or prepared after the Statement of Facts, see Reference Material, Enforcement Actions, Sections 1-1100 and 1-1150.

1-1025 EVIDENCE AND DOCUMENTATION 1-1025
SAMPLE DECLARATIONS (Continued)

THIS DECLARATION IS TO BE USED WHEN THE DEPARTMENT ISSUES A SUBPOENA DECUS TECUM. HAVE THE CUSTODIAN OF RECORDS SIGN THE DECLARATION WHEN YOU PICK UP THE REQUESTED MATERIAL OR HAVE THE PERSON SEND IT TO YOU ALONG WITH THE INFORMATION. FILL IN THE INFORMATION THAT DESCRIBES THE MATERIALS REQUESTED AND FROM WHOM.

NOTE: Some hospitals and other agencies have their own forms for certification of documents by the custodian of records. Courts and some other agencies have a certification rubber stamp to which a signature is added. These forms of certification are also acceptable.

I, _____, declare:

1. I am the duly authorized custodian of the records of the [name of business, office or agency], and have authority to certify records.

2. On [date] I was served with a subpoena duces tecum issued by the California Department of Social Services, calling for [type of reports, documents or evidence requested, such police or medical reports, audio tape], writings and other materials pertaining to [name of person, suspect, facility.]

3. The accompanying copies are true copies of all records described in the subpoena that are in my possession as custodian of the records of the [name of business, office or agency]. These records were prepared by the personnel of [name of business, office or agency] and other persons acting under the control of said personnel, in the ordinary course of business, at or near the times of the acts, conditions, or events recorded in the records.

4. I have personal knowledge of the facts as stated above and if called as a witness I could competently testify thereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:_____

_____
Custodian of Records

*** THIS LETTER IS AVAILABLE IN THE COMMON LIBRARY**

1-1025 EVIDENCE AND DOCUMENTATION: SAMPLE DECLARATIONS (Continued) **1-1025**

THIS DECLARATION IS TO BE USED WHEN THE DEPARTMENT DOES NOT ISSUE A SUBPOENA DECUS TECUM AND THE CUSTODIAN OF RECORDS GIVES THE DEPARTMENT THE REQUESTED MATERIAL UPON THE DEPARTMENT'S REQUEST. HAVE THE CUSTODIAN OF RECORDS SIGN THE DOCUMENT WHEN YOU PICK UP THE DOCUMENTS OR HAVE THE PERSON SEND IT TO YOU ALONG WITH THE INFORMATION. FILL IN THE INFORMATION THAT DESCRIBES THE MATERIALS REQUESTED AND FROM WHOM.

NOTE: Some hospitals and other agencies have their own forms for certification of documents by the custodian of records. Courts and some other agencies have a certification rubber stamp to which a signature is added. These forms of certification are also acceptable.

I, _____, declare:

1. I am the duly authorized custodian of the records of the [name of office or agency], and have authority to certify records.

2. On [date], [name] of the California Department of Social Services, requested [type of report or information sought, police medical], writings and other materials pertaining to [name of person, suspect, facility.]

3. The accompanying copies are true copies of all records described and requested in paragraph 2 above that are in my possession as custodian of the records of the [name of office or agency]. These records were prepared by the personnel of [name of office or agency] and other persons acting under the control of said personnel, in the ordinary course of business, at or near the times of the acts, conditions, or events recorded in the records.

4. I have personal knowledge of the facts as stated below and if called as a witness I could competently testify there to.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

_____
Custodian of Records

*** THIS LETTER IS AVAILABLE IN THE COMMON LIBRARY**

1-1025 EVIDENCE AND DOCUMENTATION: SAMPLE DECLARATIONS (Continued) **1-1025**

USE THIS DECLARATION FOR A MEDICAL PROFESSIONAL WHO OBSERVED OR DIAGNOSED THE INJURY. THE DECLARATION HAS THE MEDICAL PROFESSIONAL SWEAR THAT THE ATTACHED REPORT IS A TRUE AND CORRECT STATEMENT OF WHAT OCCURRED.

NOTE: Some hospitals and other agencies have their own forms for certification of documents by the custodian of records. Courts and some other agencies have a certification rubber stamp to which a signature is added. These forms of certification are also acceptable.

DECLARATION OF [NAME]

1. I have personal knowledge of the facts as stated below and if called as a witness I could competently testify thereto.

2. I am a [doctor, nurse, psychiatrist] and currently work at [name of hospital, medical practice and location].

3. [If possible, get a copy of the person's *curriculum vitae*, (i.e., copy of their license or other appropriate documentation of the person's qualifications as a medical professional.) "Attached is a copy of my curriculum vitae."]

4. On [date] I examined [patient's name] for [from the report state the reason why the doctor was examining the patient, such as the patient complained of pain in her left arm or patient was referred to me for therapy for possible sexual abuse.]

5. During my examination of [patient's name], I found that [list the medical conditions found, such as a spiral fracture and other injuries, or for therapists, include statements made by the patient that are relevant, such as the patient told me that John Smith molested her.]

6. Attached to my declaration is a true and accurate copy of my [name of the report] concerning my examination of [patient's name.] If called to testify, I would testify as to my observations, statements and medical opinions as stated in my report.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed on this____day of _____, 20___ at _____, California.

_____
Name, Include Professional Title, e.g., Dr., MFCC

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1-1025 EVIDENCE AND DOCUMENTATION: SAMPLE DECLARATIONS (Continued) **1-1025**

THIS DECLARATION IS TO BE USED FOR INTERVIEWS OF THE VICTIM IN LIEU OF THE VICTIM'S EXECUTING HIS OR HER OWN DECLARATION. FOR YOUNG CHILDREN AND ADULTS WITH MENTAL IMPAIRMENTS, MAKE SURE YOUR DECLARATION CONTAINS INFORMATION THAT SHOWS THAT THE WITNESS KNOWS THAT THE WITNESS MUST TELL THE TRUTH AND THE WITNESS KNOWS WHAT THE TRUTH AND A LIE ARE, AND THE CONSEQUENCES OF NOT TELLING THE TRUTH. MAKE SURE YOUR DECLARATION CONTAINS STATEMENTS AS TO THE REASONS WHY YOU BELIEVE THE VICTIM'S STATEMENT TO BE TRUSTWORTHY, AND MEASURES TAKEN TO ENSURE THE RELIABILITY OF THE VICTIM'S STATEMENT, SUCH AS HAVING ANOTHER PERSON SITTING IN ON THE INTERVIEW AND ASKING PROPER QUESTIONS.

DECLARATION OF [Name]

1. I have personal knowledge of the facts as stated below and if called as a witness I could competently testify thereto.

2. I am employed as a [Licensing Program Analyst/Licensing Program Manager, Investigator] by the ("California Department of Social Services"), [Work Address]. My duties include [list duties, such as the inspection of group and foster homes to determine the facilities are in compliance with applicable licensing laws and regulations.]

3. I have been employed by the California Department of Social Services for [list how long employed in the Department as job title, such as five years as a Licensing Program Analyst, 1990-1995, and from 1995 to the present as an investigator.] During my employment with the California Department of Social Services, I have inspected numerous facilities for compliance with licensing laws and regulations. [List all witness interview training you have had, and the number or frequency of interviews with children or adults with mental or developmental disabilities.]

4. [Detail here what prompted you to interview the victim, such as the California Department of Social Services received a complaint against the Smith Group Home that a staff member physically abused a client, or I received an investigation assignment request to interview the victim, John Smith.]

5. On [Date], I interviewed [name of victim] at [location]. Also present during my interview was [name]. The interview began at [time] and ended at [time]. During this interview, we discussed [list in generic terms what you discussed, such as the care provided at the foster home or how employee John Smith disciplined the victim.]

1-1025 EVIDENCE AND DOCUMENTATION: SAMPLE DECLARATIONS (Continued) **1-1025**

6. The [date] interview of [name of victim] was [taped/audio] recorded with [name of victim] with [his/her or consent of parent if a child or conservator if conserved adult] consent. Attached to my declaration is a true and correct copy of the tape of the interview [and transcript of the taped interview if transcribed]. During the interview, [name of victim] stated that [give a brief narrative of the event]. This information from [name of victim] is included from the statement made by [name of victim] on the tape.

7. [List factors that give you indications as to the trustworthiness of the victim's statement. This would include statements from the victim that the victim knows to tell the truth, the importance of telling the truth and a promise that the victim will tell the truth. Other factors to list include how detailed the victim's description of events are, use of age appropriate language for young children, specific descriptions as to body parts and functions, prior consistent statements made to other persons and consistent statements of the event made by other persons.]

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed on this____day of _____, 20__ at _____, California.

_____
Name

*** THIS LETTER IS AVAILABLE IN THE COMMON LIBRARY**

1-1025 EVIDENCE AND DOCUMENTATION: SAMPLE DECLARATIONS (Continued) **1-1025**

THIS DECLARATION IS TO BE USED FOR RECORDED INTERVIEWS OF THE VICTIM CONDUCTED BY ANOTHER PERSON, SUCH AS IN A MULTI-DISCIPLINARY INTERVIEW CENTER, THAT YOU OBSERVED IN LIEU OF THE VICTIM'S EXECUTING HIS OR HER OWN DECLARATION OR YOUR WRITING A FULL-BLOWN DECLARATION AS TO THE VICTIM'S STATEMENTS. FOR YOUNG CHILDREN AND ADULTS WITH MENTAL IMPAIRMENTS, MAKE SURE THE RECORDING CONTAINS INFORMATION THAT SHOWS THAT THE WITNESS KNOWS THAT THE WITNESS MUST TELL THE TRUTH AND THE WITNESS KNOWS WHAT THE TRUTH AND A LIE ARE, AND THE CONSEQUENCES OF NOT TELLING THE TRUTH. MAKE SURE THAT YOUR DECLARATION CONTAINS STATEMENTS AS TO THE REASONS WHY YOU BELIEVE THE VICTIM'S STATEMENT TO BE TRUSTWORTHY, AND MEASURES TAKEN TO ENSURE THE RELIABILITY OF THE VICTIM'S STATEMENT, SUCH AS HAVING ANOTHER PERSON SITTING IN ON THE INTERVIEW AND ASKING PROPER QUESTIONS.

DECLARATION OF [Name]

1. I have personal knowledge of the facts as stated below and if called as a witness I could competently testify thereto.

2. I am employed as a [Licensing Program Analyst/Licensing Program Manager, Investigator] by the ("California Department of Social Services"), [Work Address]. My duties include [list duties, such as the inspection of group and foster homes to determine the centers are in compliance with applicable licensing laws and regulations.]

3. I have been employed by the California Department of Social Services for [list how long employed in the Department as job title, such as five years as a Licensing Program Analyst, 1990-1995, and from 1995 to the present as an investigator.] During my employment with the California Department of Social Services, I have inspected numerous facilities for compliance with licensing laws and regulations. [List all witness interview training you have had, and the number or frequency of interviews with children or adults with mental or developmental disabilities.]

4. [Detail here what prompted the interview of the victim, such as the California Department of Social Services received a complaint against Smith Group Home that a staff member physically abused a client, or the Department was investigating a child abuse complaint.]

5. On [Date], [name of person who conducted interview, job title, employer and address] interviewed [name of victim] at [location], which I observed. Also present during the interview was [name]. The interview began at [time] and ended at [time]. During this interview, [interview's name] and [victim's name] discussed [list in generic terms what was discussed, such as the care provided at the foster home or how employee John Smith disciplined the victim.]

1-1025 EVIDENCE AND DOCUMENTATION: SAMPLE DECLARATIONS (Continued) **1-1025**

6. The [date] interview of [name of victim] was [video/audio] recorded with [name of victim] with [his/her or consent of parent if a child or conservator if conserved adult] consent. Attached to my declaration is a true and correct copy of the tape of the interview [and transcript of the taped interview if transcribed]. During the interview, [name of victim] stated that [give a brief narrative of the event]. This information from [name of victim] is included from the statement made by [name of victim] on the tape.

7. [List factors that give you indications as to the trustworthiness of the victim's statement. This would include statements from the victim that the victim knows to tell the truth, the importance of telling the truth and a promise that the victim will tell the truth. Other factors to list include how detailed the victim's description of events are, use of age appropriate language for young children, specific descriptions as to body parts and functions, prior consistent statements made to other persons and consistent statements of the event made by other persons.]

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed on this____day of _____, 20__ at _____, California.

_____
Name

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1-1025 EVIDENCE AND DOCUMENTATION: SAMPLE DECLARATIONS (Continued) **1-1025**

THIS DECLARATION IS TO BE USED FOR RECORDED INTERVIEWS OF THE VICTIM IN LIEU OF THE VICTIM'S EXECUTING HIS OR HER OWN DECLARATION OR YOUR WRITING A FULL-BLOWN DECLARATION AS TO THE VICTIM'S STATEMENTS. FOR YOUNG CHILDREN AND ADULTS WITH MENTAL IMPAIRMENTS, MAKE SURE THE RECORDING CONTAINS INFORMATION SHOWING THAT THE WITNESS KNOWS THAT THE WITNESS MUST TELL THE TRUTH AND THE WITNESS KNOWS WHAT THE TRUTH AND A LIE ARE, AND THE CONSEQUENCES OF NOT TELLING THE TRUTH. MAKE SURE YOUR DECLARATION CONTAINS STATEMENTS AS TO THE REASONS WHY YOU BELIEVE THE VICTIM'S STATEMENT TO BE TRUSTWORTHY, AND MEASURES TAKEN TO ENSURE THE RELIABILITY OF THE VICTIM'S STATEMENT, SUCH AS ANOTHER HAVING PERSON SIT IN ON THE INTERVIEW AND ASKING PROPER QUESTIONS.

DECLARATION OF [Name]

1. I have personal knowledge of the facts as stated below and if called as a witness I could competently testify thereto.

2. I am employed as a [Licensing Program Analyst/Licensing Program Manager, Investigator] by the ("California Department of Social Services"), [Work Address]. My duties include [list duties, such as the inspection of group and foster homes to determine the centers are in compliance with applicable licensing laws and regulations.]

3. I have been employed by the California Department of Social Services for [list how long employed in the Department as job title, such as five years as a Licensing Program Analyst, 1990-1995, and from 1995 to the present as an investigator.] During my employment with the California Department of Social Services, I have inspected numerous facilities for compliance with licensing laws and regulations. [List all witness interview training you have had, and the number or frequency of interviews with children or adults with mental or developmental disabilities.]

4. [Detail here what prompted you to interview the victim, such as the California Department of Social Services received a complaint against Smith Group Home that a staff member physically abused a client, or I received an investigation assignment request to interview the victim, John Smith.]

5. On [Date], I interviewed [name of victim] at [location]. Also present during my interview was [name]. The interview began at [time] and ended at [time]. During this interview, we discussed [list in generic terms what you discussed, such as the care provided at the foster home or how employee John Smith disciplined the victim.]

1-1025 EVIDENCE AND DOCUMENTATION: SAMPLE DECLARATIONS (Continued) **1-1025**

6. During the [date] interview of [name of victim], I [taped/audio] recorded my conversation with [name of victim] with [his/her] consent. Attached to my declaration is a true and correct copy of the tape of my interview [and transcript of the taped interview if transcribed]. During my interview, [name of victim] informed me that [give a brief narrative of the event]. This information from [name of victim] is included from the statement made by [name of victim] on the tape.

7. [List factors that give you indications as to the trustworthiness of the victim's statement. This would include statements from the victim that the victim knows to tell the truth, the importance of telling the truth and a promise that the victim will tell the truth. Other factors to list include how detailed the victim's description of events are, use of age appropriate language for young children, specific descriptions as to body parts and functions, prior consistent statements made to other persons and consistent statements of the event made by other persons.]

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed on this ____ day of _____, 20__, at _____, California.

_____

Name

*** THIS LETTER IS AVAILABLE IN THE COMMON LIBRARY**

1-1100 THE STATEMENT OF FACTS 1-1100

Whenever a decision is made to seek Administrative Action against an applicant or licensee, a Statement of Facts outlining the basis for the denial of an initial application, the revocation of an existing license or the exclusion action must be prepared.

If the application denial/ license revocation/exclusion is based on issues other than or in addition to a conviction of a non-exemptible crime, or a denied, canceled or rescinded exemption, the Regional Office will prepare the Statement of Facts. If the application denial/license revocation/exclusion is solely based on a conviction of a non-exemptible crime, or a denied, canceled or rescinded exemption, the Program Office will forward any appeals received to the Caregiver Background Check Bureau. The Caregiver Background Check Bureau will prepare the Statement of Facts in these instances. See Reference Material, Background Check Procedures, Sections 7-1740 and 7-1760.

County Licensing Agencies are responsible for the Statement of Facts in both of the above-referenced instances.

For actions against Group Homes, Adult Residential Facilities, and Residential Facilities for the Elderly that involve the facility administrator, contact the Manager of the Administrator Certification Section to discuss any additional actions necessary. Such actions could include revocation of the administrator certificate and/or revocation of an approved vendor. The Administrator Certification Section will provide all additional information/evidence necessary to the Regional Office to be submitted with the Statement of Facts.

"Statement of Facts" is a package containing a summary of the problems with a given facility or individual, a list of people who could testify about those problems, and the documents and other materials which the Licensing Attorney needs to develop a Statement of Issues for a denial or an Accusation for a revocation or exclusion. The package is also used to identify evidence available for use in a hearing. A Statement of Facts is required in every case in which a Temporary Suspension Order or license revocation is requested, or a denied license application or exclusion is appealed. A Statement of Facts to file the action for the record may be appropriate even when a denial or exclusion is not appealed.

The local Licensing Office continues to be responsible for licensing services to the facility, even while Administrative Action is under consideration. For example, after a case has been referred for possible Administrative Action, the local Licensing Office should continue making all required facility inspections. The Licensing Office should contact the assigned attorney when planning a facility inspection for any reason, to see if the attorney has any requests (e.g., check for clearances, obtain a new roster). All licensing reports resulting from these inspections must be forwarded to the assigned attorney IMMEDIATELY upon completion as "follow-up documents." Sending a case to the Legal Division does not end the Licensing Program Analyst's responsibility to the facility. (See also Reference Material, Enforcement Actions, Section 1-1150.)

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130

The Statement of Facts format has been designed to make the Licensing Program Analyst's job, in preparing a case for legal action, easier and more efficient. Detailed instructions for completing each section of the form are contained in this section.

State Licensing Offices will use the Statement of Facts Summary Sheet (LIC 9029A), which has been converted to a Word document with locked data fields in the Field Automation System (FAS). The forms are in the Community Care Licensing Division Common Library. The Statement of Facts Summary Sheet (LIC 9029A) is created and packaged by the Licensing Program Analyst and submitted to the Licensing Program Manager for approval. The Licensing Program Manager reviews, approves and then forwards it to the Regional Manager for approval. The Regional Manager or delegate emails the Statement of Facts to the Program Office or Assistant Program Administrator for final approval. The hard copy package is then mailed to the Legal Division. (See Reference Material, Enforcement Actions, Section 1-1140.)

The Licensing Program Manager or Regional Manager should review the entire package when the Statement of Facts and supporting documents have been assembled, to ensure completeness and appropriate organization prior to sending the package to the Legal Division. The Statement of Facts Preparation Checklist (LIC 9029B) is a tool to be used by the manager to assist in the review of the package. The Statement of Facts Preparation Checklist (LIC 9029B) should then be attached to the package.

County Licensing Offices will use the Statement of Facts Summary Sheet (LIC 9029A). The Statement of Facts package will be reviewed and approved by the Program Manager. The Statement of Facts Preparation Checklist (LIC 9029B) is a tool to be used by the manager to assist in the review of the package. The Statement of Facts Preparation Checklist (LIC 9029B) should then be attached to the package. Two copies of the entire Statement of Facts package are then forwarded to the appropriate Program county liaison for review and then approved by the Program Administrator or delegate. The Program county liaison will forward the Statement of Facts package to the Legal Division.

Statement of Facts Summary Sheet

This section of the Statement of Facts calls for data about the licensee and facility, the individual (for exclusions), the types of violations, the type of action requested, Regional Office name, Licensing Program Analyst's name and provides a section for approvals. All pertinent fields must be completed accurately. For Immediate Exclusions and telephone Temporary Suspension Orders, the name of the attorney must be included. The Program Office enters the information from the Statement of Facts Summary Sheet into the Legal Case Tracking System which tracks the case from receipt in Legal to closure.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)

It is particularly important that information such as current capacity, facility type, and operating status be complete and accurate, especially when a Temporary Suspension Order is being considered. If, for example, there are no clients in a facility that information may significantly affect the decision to issue a Temporary Suspension Order and the speed with which the Legal Division should act. However, the absence of clients in care will not necessarily prevent the issuance of a Temporary Suspension Order. For example, a county may remove its placements from a Foster Family Home after receiving evidence of sexual abuse in that home, but a real probability of placements from other agencies would support the issuance of a Temporary Suspension Order.

The closure of a Residential Care Facility for the Elderly can often present particular problems due to the lack of a placement agency, and the age and frailty of the clients. In these cases, the Statement of Facts must clearly identify the number of clients in care and their ambulatory status, and any other pertinent information about their condition. This information will be critical to the Community Care Licensing Division management for comprehensive relocation planning prior to issuance of a Temporary Suspension Order.

Where a Temporary Suspension Order is requested for a Children's Residential Facility, refer to Reference Material, Complaints, Section 3-2628 for special investigation requirements prior to submitting the case for legal action.

A separate Statement of Facts summary sheet is required for each type of action and each license. For example: Revocation of a Child Care Center license with three components would require a separate face sheet for each component since each has its own license number. Each revocation action is assigned a letter identification added to the legal case number. The legal case numbers in this example might be Child Care Center 123456789; Infant Center 123456789B; School Age Center 123456789C. Another example is a request for a Revocation of a Group Home license and exclusion and decertification of the administrator. Separate face sheets are required because there are three different actions. Each will be assigned a letter identification added to the legal case number. The legal case numbers in this example might be My Group Home (revocation) 987654321; Mr. Administrator (exclusion) 987654321B; and Mr. Administrator (administrator decertification) 987654321C.

The exception to the rule of one action per Statement of Facts Summary Sheet (LIC 9029A) is when a Temporary Suspension Order is requested, a Revocation must always be requested as well. This can be done on one summary sheet as there is only one legal case number issued for both the Temporary Suspension Order and the Revocation.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)

When a licensee has multiple facilities, it is necessary to submit separate face sheets for each facility against which action is being taken. The Legal Division may be consulted prior to submitting the facilities for legal action. The following guidelines should be considered in determining which facilities should be included in the legal action:

- If abuse, neglect or criminal conduct on the part of the licensee is involved, all facilities should be included in the legal action.

- If the facility is dually licensed at the same address, i.e., Family Child Care Home and Foster Family Home or Certified Family Home, both licenses should be included in the legal action.

  - For dual licensed facilities that cross programs, the program that initiates the action, takes the lead and issues the legal case numbers.

- If the revocation is based on the character or poor judgment of a common licensee or administrator, all facilities should be included in the legal action.

- If the revocation is based on the action or judgment of a single staff person at one facility location only or on other reasons which are unique to one facility location (i.e., physical plant, supervision), it is only necessary to submit that particular facility for legal action.

Comments Section

This section may be used to provide additional information that does not fit on the case summary sheet. Requests such as revocation of an administrator certificate and/or approved vendor or TrustLine registry should be included in this section.

For dual licensed facilities that cross programs, indicate that a companion case from another program is being submitted separately.

If the licensee is a corporation, list the corporate officers and their addresses, the names and addresses of any board members involved in the management of the facility, the name and address of the corporation's agent for service of process, and the names of any subsidiary or parent corporations that may be involved. All of this information may be added in the comments section of the Statement of Facts Summary Sheet (LIC 9029A).

In short, it is very important that the Statement of Facts Summary Sheet (LIC 9029A) be completed fully and accurately. Omissions may cause delays in the processing of the case in the Legal Division.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)

Case Summary

The case summary is intended primarily to enable Community Care Licensing and Legal Management to assess the seriousness of the problem(s), the risk to clients in care, the appropriateness of the recommended action in light of the problems, and the consistency of the recommended action in this case with other, similar, cases throughout the State.

For State cases, the Statement of Facts is emailed to the Program Office or Assistant Program Administrator for review and approval. County cases are mailed to the Program county liaison. The Statement of Facts is approved based primarily on the summary; therefore, it is important to have a concise summary that gives enough information so a decision can be made.

When the case gets to the Legal Division, the Deputy General Counsel or his/her designee uses the summary to prioritize the case and make case assignments.

The Licensing Program Analyst should complete the Complaint and Type A Violation Log (LIC 9216) prior to writing the case summary. The Complaint and Type A Violation Log (LIC 9216) will provide a snapshot of the most serious issues related to the facility. [See Other Forms Included in the Statement of Facts Package, below in this same section, and Complaint and Type A Violation Log (LIC 9216).] The Licensing Program Analyst then prepares a brief narrative of the reasons Administrative Action is being sought. The narrative should include the major violations and should comment briefly on the licensee's compliance history. It is not necessary to cite specific regulation sections or to give elaborate details of the problem(s) in question. The summary should set forth the strengths and weaknesses of the case.

If the action requested is a Temporary Suspension Order, the summary should clearly state why a Temporary Suspension Order is necessary. If the action requested is Expedited Revocation, the summary must clearly state why there is a need to expedite the case. This will assist the Legal Division in prioritizing the case.

If the Administrative Action is based in part on a lack of criminal records clearance, note that fact in this section and obtain the criminal record exemption denial documentation from the Caregiver Background Check Bureau. County Licensing Offices process their own exemptions and provide the criminal record exemption denial documentation.

A case can usually be summarized in a few paragraphs. For example, a physical abuse case involving a Family Child Care Home could be summarized as follows:

"On February 3, 2003, physical abuse was substantiated against the licensee. The licensee slapped a 3-1/2 year old child in care on the thigh, leaving a bruise in the shape of an adult handprint. Both the parents and the licensee indicate there was no bruising on the child when the child arrived at day care. Parent noticed bruise later that evening and took the child to the doctor and reported to police. Police photographed injury.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)

"Licensee admitted to spanking the child. Licensee was cited for Personal Rights violation and advised that the case would be submitted for legal action. Licensee voluntarily surrendered her license during the inspection. Licensee was instructed to notify parents of children that her child care services would cease effective February 5, 2003, at 5:00 p.m.

"History: This facility has been licensed since 1998. A personal rights violation - withholding food as punishment - was substantiated in 1999. There was also one complaint in 2000 regarding spanking children in care, which resulted in an inconclusive finding.

"We are requesting an expedited revocation for the record due to the abuse that occurred. Additionally, while the licensee surrendered her license, there is concern that she may continue to operate her facility. The Regional Office will monitor the facility periodically to ensure no unlicensed care is being provided."

Special Issues/Pertinent Information

The Licensing Program Analyst should use this section to add comments or notes about a case that do not fit neatly into any of the other sections of the Statement of Facts. In this section, for example, the Licensing Program Analyst could indicate that Child Protective Services, local law enforcement or an Investigator are pursuing some other aspect of the case. Or the Licensing Program Analyst could explain why a given case is particularly sensitive in his or her location. This section could also be used to indicate why the Regional Office or county involved has particularly strong feelings about a given case, or concerns about the consequences of failure to pursue Administrative Action. If you have information indicating that the licensee or applicant in your case has or has had other licenses, that information should be noted here as well. Also note any of the following in this section:

- Whether the Statement of Facts package contains photographs, medical records or other special types of evidence.

- Whether the licensee has moved or otherwise forfeited the license. Send a forfeiture letter and enclose a copy in the Statement of Facts package. For forfeitures after the Statement of Facts, see Reference Material, Enforcement Actions, Section 1-1150.

- The reason for any delay in referring the case to the Legal Division.

- The date of the last facility inspection and the census at that time.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)

- Whether the licensee corrected any of the major violations that form the primary basis for the Statement of Facts, and how the licensee responded to these citations (e.g., belligerent and dishonest denial, admitted and was cooperative in attempting to correct the violations, refused to sign Facility Evaluation Report (LIC 809) or Complaint Investigation Report (9099) and told Licensing Program Analyst to get out).

Informal Meeting(s)/Noncompliance Conference(s)

In this section, the Licensing Program Analyst can summarize any informal meeting or Noncompliance Conference with the licensee that may have occurred prior to or at the time of the decision to seek Administrative Action. This summary should make it clear (unless the recent violation(s) or pattern and practice were serious enough to merit Administrative Action without further opportunity for correction) that the licensee has been given every opportunity to avoid legal action against his or her license.

If the licensee has failed to comply with regulations after the Noncompliance Conference, the Noncompliance Conference Summary (LIC 9111) documenting the conference may serve as a very important piece of evidence at the subsequent hearing to revoke the license. The Noncompliance Conference Summary (LIC 9111) will show that the Licensing Agency acted reasonably with the licensee, and gave the licensee every opportunity to comply with regulations before resorting to the final measure of revocation proceedings. The Noncompliance Conference Summary (LIC 9111) should reflect any admissions made during the informal meeting or Noncompliance Conference (e.g., "The licensee stated that he employed Joe Jones and Sam Smith for a two-week 'try-out' without a criminal record clearance, child abuse clearance or tuberculosis clearance.")

If an informal meeting or Noncompliance Conference has been held, the Licensing Program Analyst should summarize, in this section of the Statement of Facts, the major points made at the meeting/conference, and to indicate where in the exhibits the documentation relating to the informal meeting(s)/conference(s) can be found. In a case involving physical plant deficiencies, for example, the Licensing Program Analyst might make the following note in this section:

"A Noncompliance Conference was held with the licensee on November 16, 2013. Several physical plant violations were discussed with the licensee, and the 809s relating to those instances were reviewed. The seriousness of the problem was explained to the licensee, and she stated she would prevent this problem from recurring. See Noncompliance Conference Summary (LIC 9111), dated November 16, 2013, and signed by Mary Watkins, licensee."

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)

Witnesses

The witness list is perhaps the most important section of a Statement of Facts. There may be multiple violations in a facility, but without witnesses to testify about the violations, it will be impossible in most cases for the Legal Division to prepare pleadings or to win the case at the hearing. The Licensing Program Analyst should always be listed as a witness. If the Investigations Branch is involved, include the name of the investigator and supervisor.

It is important to provide complete identifying information on all witnesses such as date of birth, driver's license numbers, current work and residence addresses and phone numbers and names of next of kin, if possible. (Unless the violations occurred immediately before the Statement of Facts, it is important to make an effort to verify or update the witnesses' information address, telephone numbers, etc.). The case should reach the Legal Division with up-to-date contact information for witnesses.

If the Licensing Program Analyst has some special information about a witness that would be helpful to the assigned Licensing Attorney, that information should be noted in the Comments Section for that witness. For example, the Licensing Program Analyst might indicate that a witness is hostile and probably unwilling to testify for the State, or that a witness may be too young or too disabled to serve as a witness. It is better to list the witness with these reservations noted than to omit the witness because there are problems. The Licensing Attorney assigned to the case is best able to determine the ability and willingness of witnesses to testify.

Other Forms Included in the Statement of Facts Package

Department of Justice Notification Form

Fill out the Department of Justice notification form, County Licensing Administrative Action Personnel Flagging Attachment (LIC 9011A), with all known information requested in the form, for any of the following: the licensee(s) or applicant(s), the excluded person and/or the administrator against whom Administrative Action is being taken.

Complaint and Type A Violation Log

The Complaint and Type A Violation Log (LIC 9216) is a tool used to assist the Licensing Program Analyst, Licensing Program Manager, County Program Manager and Regional Manager to assess the seriousness of the case. The Licensing Program Analyst should complete the Complaint and Type A Violation Log (LIC 9216) prior to writing the case summary. (Please refer to **Case Summary** in this section above.) The Complaint and Type A Violation Log (LIC 9216) is also useful to the assigned attorney and legal analyst as a quick reference. For Statement of Facts requesting Temporary Suspension Orders that are based on one incident, it may not be necessary to complete the Complaint and Type A Violation Log (LIC 9216). However, it is "best practice" to always complete the form.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)

Fill out the Complaint and Type A Violation Log (LIC 9216) with information from the case file. Record all Type A violations cited and any resulting action taken such as an Informal Meeting, Noncompliance Conference, Compliance Conference, or Administrative Action. Also record any inconclusive complaints of physical or sexual abuse and any others relevant to the action. Consult with the Licensing Office's assigned Legal Consultant if there are any questions about whether or not to include specific inconclusive complaints.

Organizing the Statement of Facts Package

See discussion in Reference Material, Enforcement Actions, Section 1-1020 for documents and other items of evidence that should be included with the Statement of Facts. It may be appropriate to retain bulky items of evidence (e.g., the stick with which children were disciplined) in the Regional Office, County Licensing Office or Investigations Branch, providing a description and perhaps a photograph of the item with the Statement of Facts. Note this under Special Issues/Pertinent Information on the Statement of Facts Summary Sheet (LIC 9029A). Remove duplicate documents from attachments sent to the Legal Division.

CASE FILE INDEX

This index is a guide for organizing the case file documents that accompany a Statement of Facts which includes the Statement of Facts (LIC 9029A), the Statement of Facts Preparation Checklist (LIC 9029B), the Complaint And Type A Violation Log (LIC 9216), the County Licensing Administrative Action Personnel Flagging Attachment (LIC 9011A) for facilities licensed by a county and the CDSS Licensing Administrative Action Personnel Flagging Attachment (LIC 9011B) for facilities licensed by the state. Documents should be separated into sections, using colored or preferably tabbed section dividers. Write the number and/or name of the section on the divider or tab. Because the documents that accompany a Statement of Facts vary widely, this index is a general guide to organizing materials by sections. The relevance and importance of documents, and the ease of locating documents in the file, should always be kept in mind.

Table of Contents

List the number and name of each section.

1. Attorney Consultation Documents

Include completed attorney consultation forms, memos and/or emails.

2. License(s) or Initial Application

In a license revocation case, include a copy of all licenses issued (current and expired or superseded), with the most recent on top, in this section. Be sure to include the most recent license, and that it reflects accurately the current capacity, restrictions, etc. In an

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)

application denial case, place the initial application form (Application for a Community Care Facility or Residential Care Facility for the Elderly (LIC 200), Application for a Child Care Center License (LIC 200A), Application for a Family Child Care Home License (LIC 279) or Foster Family Home Application (LIC 283)) here.

3. Denials, Exclusions, Appeals

Place all denial letters (for applications and/or Caregiver Background Check Bureau exemptions), Exclusion Orders, and any appeals in this section.

4. Licensing Information System Printouts

Include new Licensing Information System printouts for all licenses of the licensee and for all associations of any person against whom Administrative Action is sought. Include any potentially relevant earlier Licensing Information System printouts found in the facility file.

Counties submit proof of Federal Bureau of Investigation, Child Abuse Central Index, and Department of Justice clearances or exemption documentation on all licensees and for all associations of any person against whom Administrative Action is sought.

5. Licensing Reports

Place all licensing reports (complaint reports, annual, case management, etc.) here. Put the most relevant reports on top, or put them in the first Licensing Reports section and put the less relevant reports in a second Licensing Reports section. ***Put confidential documents*** *(e.g., complaints, Confidential Names Lists, confidential Detail Supportive Information sheets, Investigation reports, etc.)* ***together with the associated public documents****.*

For Caregiver Background Check Bureau cases, the relevant reports for this section will be the Caregiver Background Check Bureau Analyst's work sheet, rap sheet, and any court documents or police reports.

5a. (Alternative Form of Organization) All Documents on Particular Violation

In some cases—for instance, those in which one or more complaint investigations and/or outside agency investigations are the sole or primary basis for the Statement of Facts—the best form of organization is to place all documents relating to the same violation (or simultaneous set of violations) together. This includes both licensing and other agency documents relating to the same violation(s). Put the documents in reverse chronological order. Use separate sections for each violation or set of violations that is a major basis for the Statement of Facts.

1-1130 PREPARATION OF THE STATEMENT OF FACTS PACKAGE 1-1130
(Continued)

6. Incident Reports

Include only relevant incident reports.

7. Other Agency Reports/Documents

If the alternative form of organization is not used, put reports and other documents from law enforcement, protective and placement services, Foster Family Agencies, Regional Centers, or other agencies here.

8. Medical, Financial or Other Records

If the alternative form of organization is not used, put relevant medical or other records here.

9. Photographs, Diagrams or Other Depictions

If the alternative form of organization is not used, put relevant photographs or other depictions here.

10. Correspondence/Media Reports

Put correspondence (between licensee and licensing agency, letters supporting the licensee, inquiries from elected officials, etc.) in this section if they are not included in a previous section. Also put any news clippings, Internet news reports or other media coverage information here.

11. Application and Other Pre-Licensing Documents

For licensed facilities, place any applications (and supporting materials) here. License applications for some facility types require extensive supporting documents (e.g., menus) that may have no value for the current action. Extensive sample menus or other materials that are irrelevant to the case and not even useful to an understanding of the licensee, administrator and/or facility may be omitted. Also use this section for any other pre-licensing materials that were not included elsewhere.

12. Other

Create additional sections when necessary or desirable in a particular case.

1-1140 ROUTING THE STATEMENT OF FACTS PACKAGE 1-1140

For Telephone Temporary Suspension Orders, after the Regional Manager or County Program Manager and Program county liaison, Assistant Program Administrator or Program Office delegate and Deputy General Counsel agree on the action, and an attorney has been assigned, the Licensing Office provides all case documents directly to the assigned attorney. (See Reference Material, Enforcement Actions, Sections 1-1205, 1-1210 and 1-1211.) Case documents are two-hole punched and pronged and put in a folder (unless the documents are faxed). The Licensing Office prepares and emails the closure report and Statement of Facts Summary Sheet (LIC 9029A) and Complaint And Type A Violation Log (LIC 9216), if applicable, to the Assistant Program Administrator or Program Office delegate for approval. After the Statement of Facts Summary Sheet (LIC 9029A) has been approved, the Regional Manager or delegate signs the Statement of Facts Summary Sheet (LIC 9029A) for himself/herself and the Assistant Program Manager or Program Office delegate. County offices email their closure reports and either email or fax their signed Statement of Facts Summary Sheet (LIC 9029A) and Complaint and Type A Violation Log (LIC 9216), if applicable, to the Program county liaison for approval.

The Licensing Office then provides a copy of the signed Statement of Facts Summary Sheet (LIC 9029A) to the assigned attorney. The Licensing Office also faxes a copy of the signed Statement of Facts Summary Sheet (LIC 9029A) and County Licensing Administrative Action Personnel Flagging Attachment (LIC 9011A) to the Legal Case Tracking System Analyst at 916-657-2470. The original, signed Statement of Facts Summary Sheet (LIC 9029A) and supporting documents are retained in the Licensing Office, in the Confidential Section of the facility file.

For denial of application, revocation, exclusion, and non-telephone Temporary Suspension Order actions, after the Statement of Facts Summary Sheet (LIC 9029A), County Licensing Administrative Action Personnel Flagging Attachment (LIC 9011A), and Complaint And Type A Violation Log (LIC 9216) have been emailed to and approved by the Assistant Program Administrator or Program Office delegate, the Regional Manager or delegate signs the Statement of Facts Summary Sheet (LIC 9029A) for himself/herself and for the Assistant Program Administrator or Program Office delegate. A copy of the signed Statement of Facts Summary Sheet (LIC 9029A) and all forms and supporting documents are then forwarded as a hard copy package to the Legal Division, Mail Station 8-17-27. The original, signed Statement of Facts Summary Sheet (LIC 9029A) and supporting documents are retained in the Licensing Office, in the Confidential Section of the facility file.

County Licensing Offices use the following procedures for denial of application, revocation, exclusion and non-telephone Temporary Suspension Order actions: After the Program Manager approves and signs the Statement of Facts, two copies of the Statement of Facts package (Statement of Facts Summary Sheet (LIC 9029A), Statement of Facts Preparation Checklist (LIC 9029B), and Complaint And Type A Violation Log (LIC 9216)) and copies of the facility file identified under Case File Index in Reference Material, Enforcement Actions, Section 1-1130 are mailed to the Program county liaison.

1-1140 ROUTING THE STATEMENT OF FACTS PACKAGE 1-1140
(Continued)

The Program county liaison will review the Statement of Facts and evidence in the case file and then forward it to the Program Administrator or delegate for approval and signature. The Program Office will forward the approved Statement of Facts package to the Legal Division.

For all actions involving the administrator of an Adult Residential Facility, Group Home, Short-Term Residential Therapeutic Program or Residential Care Facility for the Elderly, the Program Office will email a copy of the approved Statement of Facts Summary Sheet (LIC 9029A) to the Manager of the Administrator Certification Section for information only.

When the Administrator Certification Section submits a Statement of Facts to the Legal Division for action against the administrator of an Adult Residential Facility, Group Home, Short-Term Residential Therapeutic Program or Residential Care Facility for the Elderly, the Administrator Certification Section will email a copy of the approved Statement of Facts Summary Sheet (LIC 9029A) to the appropriate Regional Manager for information only.

1-1150 AFTER THE STATEMENT OF FACTS REACHES LEGAL 1-1150

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

Regional Office/County Licensing Responsibilities after Statement of Facts Reaches Legal

Even when the facility has been referred to the Legal Division for Administrative Action, the Licensing Program Analyst retains responsibility and control of the case. The Licensing Program Analyst must continue to perform routine licensing duties, such as required annual inspections and complaint investigations, and must ensure that the licensee meets licensee responsibilities.

In carrying out any functions related to facility monitoring, the Licensing Program Analyst must do the following:

1. Contact the assigned attorney when planning a facility inspection for any reason, to see if the attorney has any requests (e.g., check for clearances, obtain a new roster).

2. Send signed copies of all licensing reports resulting from these inspections to the assigned attorney **IMMEDIATELY** upon completion as "follow-up documents." Any other document or other item of evidence or information that is received or newly prepared should also be forwarded to the assigned attorney **IMMEDIATELY**. This even includes communications, such as letters of support, inquiries from elected officials, information that a facility stopped operating or began operating, etc.

1-1150 AFTER THE STATEMENT OF FACTS REACHES LEGAL 1-1150
(Continued)

3. **Call, email or fax the attorney if a report documents, or a complaint suggests a serious violation, or new information that may have a significant impact on the case.** The attorney may be drafting or circulating a pleading, preparing for a hearing, or discussing a possible settlement. If new information establishes or indicates a forfeiture of the license, the priority of the case (even the need for a Temporary Suspension Order and rapid hearing) may change completely.

4. Contact the assigned attorney prior to taking any action when a new application or request is received, such as an application for licensure of a new facility or for a capacity increase, or a request for an exception. Also contact the attorney before acting on a newly identified need for a Non-Compliance Conference or informal meeting. Any of these situations should be coordinated with the attorney, and may lead to amendment of the pleading

Legal Assessment of the Case. The case is reviewed and assessed by the Deputy General Counsel or designee when it arrives in the Legal Division, to assess the priority of the case and completeness of the file. The case is then assigned to a Licensing Attorney, who further reviews the case regarding priority and completeness. A legal analyst may assist the attorney in this process.

In county cases, the Legal Division will return to the county a copy of the legal case transmittal which identifies the attorney and legal assistant assigned to the case, as well as the case number. In Regional Office cases, the Legal Division prepares and sends a similar notification to the Regional Office.

The attorney, or the legal analyst at the attorney's request, may ask the local Licensing Office to obtain additional documents, to make a field inspection, or to supply details that will help the attorney understand or prove the case.

Confirmation of Witnesses. Next, the attorney may want to interview the witnesses and confirm what they have said earlier in declarations or interviews and perhaps obtain additional information. The attorney may also wish to assess the credibility of a witness and his or her ability to qualify as a witness. The attorney may also assign the legal analyst to undertake any of these tasks. The Licensing Program Analyst or Special Investigator may be asked to help locate witnesses, to make appointments to interview them, and to accompany the attorney or legal analyst as an observer at the interviews.

Drafting the Pleadings. The attorney (sometimes with the assistance of a legal analyst) must next draft the pleadings, that is, the Accusation or Statement of Issues (see Reference Material, Enforcement Actions, Section 1-0030). The Temporary Suspension Order, if any, and any other documents to be filed with the Office of Administrative Hearings is also prepared. These documents state the reasons, or the basis, for legal action. The statements in the pleadings are based on the evidence that the Licensing Program Analyst has supplied.

1-1150 AFTER THE STATEMENT OF FACTS REACHES LEGAL 1-1150
(Continued)

Service of Pleadings. A Temporary Suspension Order is always served personally by the Regional Manager along with the Accusation and other documents.

Instructions on how to complete personal service are included in the package of documents the Regional Office will receive from the Legal Division. If Regional Office staff believes there may be danger involved in serving the pleadings, arrangements should be made for police protection.

All pleadings that are not served personally are served by certified mail by the Legal Division. The local Licensing Office is sent a copy. The day the Temporary Suspension Order is served, a copy of the pleadings should be mailed, by the Regional Office, to legislators' offices and any local officials identified in the Facility Closure Plan for information regarding any contact they may receive from constituents.

In Family Child Care Homes and Child Care Center cases, the local Licensing Office will not only serve the Temporary Suspension Order**,** but also give or mail copies of the Temporary Suspension Order and Accusation to the parents of children in care as required by Reference Material, Enforcement Actions, Section 1-1190. Health and Safety Code Section 1596.8895 also requires that notice of a child care facility Temporary Suspension Order be posted "at the facility in a place readily visible and accessible to the parents or guardians [of children in care]."

If a Temporary Suspension Order has been served, the licensee may not operate while the hearing is pending. If an Accusation without a Temporary Suspension Order was served, and the licensee files a Notice of Defense, the facility may continue to operate pending a hearing. The Licensing Office **must** continue to monitor a facility after pleadings have been served, to see if the licensee is operating in violation of a Temporary Suspension Order or of other licensing regulations. If the Licensing Program Analyst observes such violations the Licensing Program Analyst **must** promptly call the attorney assigned to the case.

When serving a Temporary Suspension Orders on a community care facility, refer to Reference Material, Enforcement Actions, Section 1-1215 for special requirements on "interim hearings."

Preparation for Hearing. If the licensee returns a Notice of Defense to the Legal Division within the time allowed, the attorney will contact Office of Administrative Hearings for hearing dates. A hearing for a Temporary Suspension Order must begin within 30 days of receipt of the Notice of Defense by the Legal Division, unless the respondents (licensees and any excluded person) and the Department waive this right.

Immediate Exclusion hearings must begin within 60 days of receipt of the Notice of Defense, unless the respondent and the Department waive this right.

1-1150 AFTER THE STATEMENT OF FACTS REACHES LEGAL 1-1150
(Continued)

Hearings in all other cases generally begin within 90 days of receipt of the Notice of Defense, unless the respondent and the Department waive this right.

A continuance may be granted for good cause by the Office of Administrative Hearings.

A default order may be issued if the licensee does not return a Notice of Defense within 15 days after service (plus five (5) days if the pleading is served by mail). In a default, California Department of Social Services issues an order granting the requested relief (revocation, denial and/or exclusion) without a hearing.

In preparing for a hearing, the attorney will want to interview and prepare the witnesses, if this step was not taken earlier. Again, the Licensing Program Analyst or Special Investigator may be needed to assist with this important process.

Also, witnesses must often be summoned to the hearing with a personally served subpoena. The local Licensing Office or Special Investigator may be asked to help serve subpoenas as well, particularly when there are numerous witnesses.

Discovery. A request for discovery is served with the Accusation or Statement of Issues, asking for names and addresses of witnesses and for relevant documents. A request for discovery is often received from the respondent or the attorney or representative for the respondent. Even if no request for discovery is received, the attorney must consider providing discovery to avoid having the Administrative Law Judge order that the respondent be provided with discovery and possibly be granted a continuance (postponement) of the hearing.

The Legal Analyst generally prepares the Department's discovery under the attorney's direction. If the respondent (or the respondent's attorney or representative) fails to provide discovery, the attorney (assuming discovery is desired) must decide whether to seek compliance directly or whether to make a motion and seek an order. Sanctions (a fine, not being allowed to introduce a witness who was not named or present a document that was not supplied by a certain date, or another penalty) may be sought from the Administrative Law Judge by any party. This highlights the importance of providing new documents and other information to the assigned attorney IMMEDIATELY. See Reference Material, Enforcement Actions, Sections 1-1100 and 1-1150.

Expert Witnesses. The attorney may determine that one or more expert witnesses are needed to present the case properly. For example, a medical doctor with expertise in child abuse cases may be needed to testify that the respondent's explanation of an injury suffered by a child in care is not medically consistent with the injury. The attorney, with the assistance of the legal analyst, must select and make arrangements with appropriate, qualified experts who are willing and available to testify.

1-1150 AFTER THE STATEMENT OF FACTS REACHES LEGAL 1-1150
(Continued)

Amendment. When additional allegations arise after the Accusation or Statement of Issues is served, or the attorney determines that one or more allegations require revision, the attorney, or the legal analyst under the attorney's direction, may prepare an amended Accusation or Statement of Issues to be served on the respondent.

Conducting the Hearing. An Administrative Hearing is the applicant's, licensee's, excluded person's or administrator's "day in court." For denial of an initial application, the burden of proof is technically on the applicant to disprove the allegations contained in the Statement of Issues. In revocation and exclusion proceedings the burden of proof is on the Department to prove that the allegations contained in the Accusation are true. The Department's case is typically presented utilizing many of the following sources of evidence:

1. Testimony of the Licensing Program Analyst, Investigator, Auditor. In some instances, may also include reports and other documents prepared or obtained by these witnesses.

2. Testimony of past and current employees, placement workers, clients.

3. Any other witnesses or documents which help substantiate the allegations in the Statement of Issues and/or Accusation.

The Licensing Attorney is permitted to have one licensing representative present and assist throughout the hearing. Most often, because of his or her extensive knowledge of the case, the Licensing Program Analyst or Investigator is chosen by the attorney to be present during the hearing.

In this role, the Licensing Program Analyst or Investigator will sit at the counsel table during the hearing. The Licensing Program Analyst or Investigator may, depending on the demands of the hearing, provide insights and information as witnesses testify, take notes, and find documents in the file as needed. The Licensing Program Analyst or Investigator may also be asked to arrange transportation for witnesses and to see that they are at the hearing in time to testify according to the schedule. The Licensing Program Analyst's or Investigator's assistance at a hearing is invaluable to the attorney.

The Licensing Program Analyst or Investigator, in most Administrative Actions, will also serve as a key witness for the State. The results of the Licensing Program Analyst's and/or Investigator's conscientious observations and documentation are thereby placed before the Administrative Law Judge. The attorney will, in nearly every instance, prepare the Licensing Program Analyst and/or Investigator before the hearing and should answer any questions about the procedure. It is a good idea to attend a licensing hearing before being required to participate in one, to get a feel for the procedure and an idea of what it is like to be cross-examined.

1-1150 AFTER THE STATEMENT OF FACTS REACHES LEGAL (Continued) 1-1150

The assigned attorney should promptly work out with the Regional Office and/or Investigations Branch who the representative will be, as this may affect the selection of a hearing date and the scheduling of other obligations.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION 1-1160

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

Not all cases sent to the Legal Division for Administrative Action end up in a hearing. In many cases, for many reasons, the parties to an Administrative Action may choose to negotiate a resolution (called a settlement) of a case rather than to litigate the case in front of an Administrative Law Judge. A settlement is almost always less time-consuming and less costly for all persons involved.

Settlement discussions are always handled by the Licensing Attorney assigned to the case. Once a case has been referred for Administrative Action, the local Licensing Office **may not** negotiate a settlement of the Administrative Action with the licensee.

Specific terms and conditions set out in a settlement agreement are referred to as a Stipulation. Stipulations are entered into on behalf of the California Department of Social Services by the Deputy Director for the Community Care Licensing Division. While the attorney has the responsibility to represent the Department in Administrative Actions, the attorney does not have the authority to enter into Stipulations without prior approval of the Deputy Director for Licensing or his/her designee (generally the Assistant Program Administrator or Program Administrator). The Stipulation is not final until signed by the Deputy Director for Licensing and adopted by the Department.

Once the pleading has been served, ALL settlement discussions with the respondent should only be done by the assigned attorney. All calls to the Regional, County or Statewide Program Offices from the respondent regarding possible settlement or the legal case should be referred to the attorney. All calls from an attorney for the respondent must be referred to the attorney. The Regional, County or Statewide Program Office should alert the assigned attorney to expect the call.

The calls that should be referred include all questions regarding hearing procedures and/or whether the respondent should file a notice of defense. Questions from respondents regarding the ongoing monitoring of the facility should continue to be handled by the local Licensing Office.

Either side in an Administrative Action may initiate settlement discussions. In some instances, the licensee may agree to withdraw his or her Notice of Defense. In that case, the revocation or denial is entered by default. In other cases, the licensee may agree that his or her license can be revoked, but negotiates to avoid admissions to certain allegations. In other cases, the licensee agrees to the revocation of his or her license, and

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION (Continued) **1-1160**

the State agrees to "stay" or postpone the revocation for some period of time. During this period, the licensee is permitted to operate, provided that he or she complies with specific terms and conditions set out in the settlement agreement Stipulation. The period during which the licensee may operate subject to these conditions is known as the period of **probation**.

Settlements can enable the local Licensing Office, through the Licensing Attorney's negotiations with the licensee's attorney, to impose conditions on the continued operation of a facility. The Licensing Office is responsible for monitoring the licensee during the period of probation to ensure that the licensee complies with the terms of probation.

The Licensing Office will make an inspection within ninety (90) days of the effective date of the probation. In addition, any facility on probation will be required to have an annual inspection each year it remains on probation. Other inspections may be made if the situation requires more monitoring. The frequency of inspections during the remainder of the probation will be determined by the Licensing Office in consultation with the Legal Division based on the performance of the licensee during the first year of the probation. Contact the Legal Division right away if possible violations of probation are found.

If the licensee fails to comply with the terms of probation, the Licensing Office is responsible for referring the noncompliance for legal action. This referral is made in the same manner as an initial referral for license revocation. If the licensee does not comply with the conditions set forth in the Stipulation, the licensing attorney usually needs to prove only the violations of the specified condition(s). The stay of revocation is then set aside, and the revocation takes effect.

The licensing attorney will contact the Licensing Program Manager, Regional Manager and Assistant Program Administrator or Program Administrator or delegate for input on a given settlement proposal. Any information or opinions regarding the settlement that is being proposed should be conveyed by the management team to the licensing attorney. These opinions will figure prominently in the final decision.

The licensing attorney will contact the manager of the Administrator Certification Section whenever a settlement proposal involves the exclusion or decertification of an administrator of an Adult Residential Facility, Group Home, or Residential Care Facility for the Elderly, and settlement proposals related to the revocation of Department approval of vendors that provide administrator certification training.

Cases involving any of the items listed below must be reviewed by a Deputy General Counsel. Without substantial justification, the Legal Division will not approve a settlement.

1. Exclusion of a spouse.

2. Exclusion of a minor or dependent child, grandchild or relative.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION (Continued) **1-1160**

3. Exclusion of anyone who has molested or abused a person.

4. Surrenders.

5. Exclusion of a licensee from the operation of the facility or client contact.

6. Exclusion of a corporate officer, board member or other management person from the facility or client contact while they retain their business, professional or personal relationship with the facility.

7. Proposals that include duplicate licensees (e.g., Community Care Licensing Division and California Department of Public Health licenses for the same facility).

8. Care beyond the regulations.

9. A proposal where there is not a reasonable chance that the licensee will successfully complete probation.

10. Any proposal that allows a sex molester to continue in operation, even if it means going to hearing and losing.

11. Settlements that permit to continue in operation a facility whose license has received a Temporary Suspension Order.

12. Revocations where the respondent can reapply in less than two years.

13. A Stipulation that is used as a way to avoid hearing preparation.

Family Child Care Home Settlements – Spouse

The following clarifies the policy related to settlement proposals when the Department has caused to exclude the Family Child Care Home licensee's spouse, but is willing to allow the licensee to maintain the license; and when the Family Child Care Home licensee's spouse has a denied criminal record exemption.

The Department will not entertain any probation term or condition in settlements (Stipulations) where there is a condition that excludes the spouse of a Family Child Care Home licensee from his or her residence only during day care hours or at any time children are in care.

1-1160 SETTLEMENTS, STIPULATIONS, PROBATION (Continued) 1-1160

Settlement to Exclude Spouse

If the licensee can prove, through documentary evidence, that the licensee has filed for divorce (petition for dissolution of marriage), the spouse has been removed from the lease or has relinquished his/her property rights, and the spouse has moved from the facility and has established a legal residence elsewhere, a settlement that includes an exclusion of the spouse may be considered in order for the licensee to maintain a license, when all three of the above conditions are met.

In such settlements, the licensee will be required to comply with parent notification requirements associated with any exclusion.

Conditional Exemption – Spouse

When determining whether or not a settlement with a conditional exemption is feasible, assess the risk the person (spouse) with the denied exemption would present to children in care. If there is a risk, seek an Administrative Action to revoke the license. If it is determined that the presence of the person in the home does not pose a risk to children in care, a settlement with a conditional exemption may be considered.

Conditions on the exemption must include (but are not limited to): prohibitions against any involvement in the operation of the day care, any responsibility for care and supervision of children in care at any time, and being left alone with children in care.

When the denied exemption decision was made by the Caregiver Background Check Bureau, the settlement decision must include a discussion between the Bureau and the Program.

When the denied exemption decision was made by the County Licensing Program, the settlement decision must be discussed with the county liaison and approved by the Child Care Program Office delegate.

1-1170 DECISION AND OTHER POST-HEARING ISSUES 1-1170

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

After the hearing is over and all documents are submitted, the Administrative Law Judge writes a Proposed Decision and sends it to the Legal Division. In most cases, the proposed decision is received within 30 days of the close of the hearing.

The Legal Division will notify the local Licensing Office at the time a proposed Decision and Order is received from the Administrative Law Judge. The Licensing Office will determine whether the facility is still in operation, and if so, attempt to obtain a current facility roster. For facilities with clients in care, the Licensing Office will follow the planning and coordination procedures for developing a Facility Closure Plan.

1-1170 DECISION AND OTHER POST-HEARING ISSUES (Continued) 1-1170

When the Department decides to adopt the Proposed Decision, the Deputy Director of the Legal Division signs a Decision and Order to that effect. The Decision and Order is then served by the Legal Division, usually by mail, on the licensee and his or her attorney**.** The Decision and Order is effective no earlier than ten days from the date of signature. The Legal Division will notify the Licensing Office on the day the Decision and Order is signed. For facilities with clients in care, the Licensing Office will follow Facility Closure Plan procedures for notification and relocation as provided in Reference Material, Enforcement Actions, Section 1-1190. The Statewide Program Office and the Licensing Office that referred the case will also receive a copy.

On the very rare occasion when there is an imperative and sound reason to reject or to change the Proposed Decision, the Legal Division may request a transcript, or record, of the hearing. The Community Care Licensing Division Deputy Director must approve this request for a transcript. When the record is received, it is scrutinized by an attorney who has not been previously involved with the case. That attorney may then write an alternate decision and recommend it to the Community Care Licensing Division Deputy Director and the Legal Division Deputy Director. Alternating a decision takes many months and greatly delays the adoption of a final decision. Fortunately, it is rarely necessary to use this procedure.

A Temporary Suspension Order expires 30 days after the close of a hearing even if a final decision has not been adopted. A licensee may technically resume operation at that point. The Licensing Attorney will be aware that the 30 days is running and will call the Office of Administrative Hearings to request that the Proposed Decision be issued. If there is any delay in adoption of the case, the Licensing Attorney will advise the Licensing Office on the status of the case.

After the final Decision and Order has been adopted and served, the licensee may not operate if the decision has been made to revoke the license. The licensee may appeal any decision to the Superior Court for review. However, unless the Superior Court grants a stay, the Department's order is in effect pending the outcome of the Superior Court appeal. If there is no appeal, or no stay issued as the result of an appeal, coordinate with placement agencies for the removal of clients and ascertain that the facility has ceased operation.

1-1180 OPERATION AFTER REVOCATION 1-1180

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

The licensee must stop all operation when a license is revoked. The Licensing Program Analyst must conduct a follow-up inspection within 30 days of the effective date of the license revocation unless the Licensing Program Analyst has previously verified that the facility is not operating. Verification by means other than an actual inspection (such as an inspection from another agency or the execution of a Temporary Suspension Order) must be approved by the Licensing Program Manager. Whatever verification action is taken, documentation of the action must be placed in the facility file.

1-1180 OPERATION AFTER REVOCATION (Continued) 1-1180

If it is found at the inspection that the facility is operating in violation of the law, immediately take steps to ensure facility closure. The Licensing Program Analyst must then issue a Notice of Operation in Violation of Law to the former licensee stating that he or she is operating without a license. The Licensing Program Analyst must also consult with the Licensing Program Manager and the Licensing Office's assigned attorney consultant, or the staff attorney who prosecuted the revocation case, at once, to discuss what options to pursue.

A number of remedies can be used to obtain compliance with the licensing revocation. Regional Offices must notify the Investigations Branch of the former licensee's defiance of the Decision and Order. This constitutes a Priority I referral. (See Reference Material, Enforcement Actions, Section 1-0620 for further direction.)

A further effect of a revocation is that the local Licensing Office is not required to act upon any application submitted by the licensee for a period of two years after the revocation. Even then, after two years, the California Department of Social Services may use the matters proved at the hearing as reasons for denying future applications.

A record of licensing revocations is kept by the Department of Justice. This information is obtained from the County Licensing Administrative Action Personnel Flagging Attachment (LIC 9011A), Department of Justice Notification, which is completed by the Licensing Program Analyst and sent to the Legal Division along with the Statement of Facts. When fingerprints are submitted for a check of a criminal record, the Department of Justice notifies the California Department of Social Services if a revocation is on the record. When a prior revocation is noted as a result of a fingerprint check, the former Licensing Agency and the Legal Division should be contacted for further information before a decision is made on the license or employment.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION 1-1190

The Licensing Agency recognizes that relocation of clients, while necessary to ensure their health and safety, has an enormous impact on these clients, their families and authorized representatives, local protective agencies and the community. If a care provider places clients in imminent danger or subjects them to continual poor care, the Licensing Agency is responsible for taking action to protect clients which may cause facility closure. When the licensee has not developed a Licensee Facility Closure Plan, the Licensing Agency will develop and follow the Department's Facility Closure Plan to ensure the health and safety of clients and minimize transfer trauma during their relocation. It is the policy of the Community Care Licensing Division to provide advance notice to clients, their relatives, and authorized representatives in those situations where facility closure is identified as a possible outcome of any licensing action, according to the timeframe developed by the Program Administrator or designee (with the exception of Child Care Facilities; see "Department Facility Closure Plan – Child Care" below). In addition, it is the policy of the Community Care Licensing Division that appropriate placement and protective agencies will be involved in the planning stages prior to Administrative Actions that could require a facility closure.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) 1-1190

I. PLANNING FOR FACILITY CLOSURE AND CLIENT RELOCATION

Planning for any Administrative Actions that will result in facility closures and client relocation, including advance notification to relatives and authorized representatives, is an integral part of the Licensing Agency's responsibility to ensure the health and safety of persons in out-of-home care. Inadequate planning can create transfer and relocation trauma that is as dangerous as the situation being remedied.

A. Development of Department's Facility Closure Plan

It is the Licensing Agency's responsibility to develop a Department Facility Closure Plan notwithstanding the Licensee's Facility Closure Plan. It is the Department's policy that actions which necessitate client relocation will not be taken until a Department Facility Closure Plan is developed. The Department Facility Closure Plan will include advance notification to relatives and authorized representatives, with the exception of child care facilities. For child care facilities, parents will be notified on the day the Temporary Suspension Order is issued. In addition, an exception exists to advance notification to allow transfer prior to the development of the Department Facility Closure Plan. This exception occurs when licensing staff identify a severe threat and must call emergency personnel while licensing staff is at the facility. See procedures in this section, Part II.A., Emergency Relocations.

Regional Offices are responsible for developing a Department Facility Closure Plan as soon as information necessitating closure of an operating facility is received. The planning process begins as soon as the Regional Manager learns that an operating facility is subject to closure. The Regional Manager will contact placement and other appropriate agencies immediately to jointly plan for relocation of clients. The plan needs to be completed as soon as possible after it is determined the facility closure is necessary to protect clients and the community.

The Department Facility Closure Plan will identify agencies and individuals responsible for clients in care, notification, timeframes, alternative care arrangements, and strategies to minimize transfer and relocation trauma to the clients. Parents, placement agencies and other responsible parties will be included in the development and implementation of the Department Facility Closure Plan as specified below. Other agencies such as law enforcement, medical consultants, the State Long-Term Care Ombudsman and County Health Departments may also be included.

B. Coordination with Placement Agencies

Coordination with other agencies and affected parties can minimize transfer trauma from clients' transfer and relocation required by a facility closure. Prior to closing a facility, the Regional Office will determine which parties to contact and the resources needed for relocation. This will vary with facility type, payment systems, and whether the facility clients were placed through a placement agency. Balance the need to maintain

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) **1-1190**

confidentiality of an impending closure with the need for advance notice to agencies facilitating transfers and placements for the clients.

Each Regional Office shall maintain a current list of possible agencies that will assist in relocation. (See Reference Material, Enforcement Actions, Sections 1-1245 and 1-1260.)

C. Notification Requirements

It is the policy of the Community Care Licensing Division that as much advance notice as possible is provided to facilitate the transfer and relocation process and to minimize disruption of the lives of clients and their families. The established minimum timeframes for this notification are dependent on the types of action being taken, the facility type, the size of the facility and the specific circumstances, including but not limited to health and safety concerns, including specific health conditions of clients, number of clients receiving Supplemental Security Income, the involvement of local agencies, and whether clients have responsible parties who can assist in placement. Minimum timeframes and procedures for notification are described below.

II. ACTIONS THAT MAY REQUIRE CLIENT RELOCATION

A. Emergency Relocations

Advance notification will not be possible if licensing staff identify a threat so severe it requires an immediate call to emergency personnel. For emergency relocations, provide notification to:

1. The Program Administrator, Deputy Director and Director.

2. Known relatives or authorized representatives as soon as the situation is stabilized and clients are out of danger.

3. If the situation warrants, local elected officials, legislative representatives, and the Office of Legislation.

4. The Program Office notifies and coordinates with the Department's Office of Public Affairs and Outreach Programs if there has been or there is an expectation of media contact.

5. The Long-Term Care Ombudsman, as appropriate and in accordance with the Memorandum of Understanding between the California Department of Social Services, Community Care Licensing Division and the Department of Aging, Office of the State Long-Term Care Ombudsman.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) 1-1190

B. Temporary Suspension Orders – Department's Facility Closure Plan

1. Planning for Relocations

Child Care

The following is Child Care's Closure Plan:

- Resource and Referral Agencies: The resource and referral agency will be included in the development of the Department's Facility Closure Plan. The local resource and referral agency will be notified at least the day before the Temporary Suspension Order is served. Additional notice should be provided for Child Care Centers.

- On the day that the Temporary Suspension Order is issued, Child Care staff will call each parent to inform them of the reasons for the Temporary Suspension Order and will have a packet of information containing: the Parent Letter; a list of child care facilities in the area; the name and contact information of the Resource and Referral Agency that will be available to assist them in finding alternative child care; and the contact name and number of licensing staff available in the Regional Office.

Adult and Elderly Care

- All agencies responsible for the placement of clients in care will be included in the development of the Department's Facility Closure Plan. Such agencies may include, but not be limited to, the Public Guardian or Conservator, the Regional Center, and the County Mental Health office, as appropriate. In addition, the Long-Term Care Ombudsman and Adult Protective Services Agency may be included in the development of the Department Facility Closure Plan.

Children's Residential Care

- All agencies responsible for the placement of clients in care will be included in the development of the Department's Facility Closure Plan. Such agencies may include, but are not limited to, County Probation, County Social Services, Regional Center, and County Mental Health.

- When private placements are made by family members, licensing staff will notify them at least twenty-four (24) hours prior to serving the Temporary Suspension Order.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) 1-1190

2. Notifying Family Members

Plans for advance notification to family members should be included in the Department's Facility Closure Plan developed by the Regional Office.

Child Care Facilities

- Notice to parents, a responsible party, or both: The Temporary Suspension Order will be effective on the day issued. Notify parents or responsible parties at the time they pick up children. Provide them with a copy of the Accusation and a letter describing the process in more detail, including information about childcare resource and referral services. On the evening the Temporary Suspension Order is served, give parents telephonic notice if they did not receive personal notice of the Temporary Suspension Order. Also, mail a copy of the Accusation and letter to them. (See sample letter below).

Residential Facilities

- The Regional Office will ensure that as much notice as possible is provided to family members based on the specific circumstances of the case. In all cases, notify family members within the time period developed by the Deputy Director or designee before the Temporary Suspension Order is effective.

- Listed below are options for providing advance notice to family members. These options are not all-inclusive. Consider such factors as the size of the facility, client type, and placement options in selecting the appropriate option for providing advance notice. Discuss the option selected in the Department's Facility Closure Plan developed by the Regional Office.

Option A – Twenty-four (24) hours' notice: Notify family members at time of Temporary Suspension Order service. Temporary Suspension Order is effective twenty-four (24) hours after service.

Option B – Twenty-four (24) hours' notice: Notify family members twenty-four (24) hours prior to serving the Temporary Suspension Order. Temporary Suspension Order is effective upon service.

Option C – Forty-eight **(**48) hours' notice: Notify family members twenty-four (24) hours before service of Temporary Suspension Order effective twenty-four (24) hours after service.

- Contact family members by telephone and mail to them a letter enclosing a copy of the Accusation. Give a copy of the letter and Accusation to family members who come to the facility. Family members who come to the facility may assist their relative.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) **1-1190**

- Notify clients who are competent or who do not have an identified authorized representative at least twenty-four (24) hours prior to the effective date of the facility closure. For clients who are not competent and have a responsible representative, the placement agency has discretion in providing notice to the responsible representative.

- In addition to the above timeframes and procedures, refer to Reference Material, Enforcement Actions, Section 1-1220.

3. Notifying Other Agencies

Once the Temporary Suspension Order is served, give notice to the following agencies, even though they may not need to be involved in the Department's Plan.

- Child Care: Notify the California Department of Education, Child Development Division and Child Care Food Program, and the local County Welfare Department as soon as possible within twenty-four (24) hours of the time of service.

- Adult and Elderly Care: State Department of Health Care Services – Licensing and Certification, State Department of Health Care Services – Long-Term Care Division (if any clients participate in the Assisted Living Waiver Program), County Medi-Cal, the Social Security Administration, and the State Long-Term Care Ombudsman will be notified as soon as possible within twenty-four (24) hours of the time of service.

- Children's Residential: Notify the California Department of Social Services Foster Care Branch and the California Department of Education as soon as possible within twenty-four (24) hours of the time of service.

- Developmentally Disabled: Notify the California Department of Developmental Services within twenty-four (24) hours of the time of service.

4. General Notification in All Cases

After the Deputy has signed the Temporary Suspension Order, and on the same day the family members and other responsible parties are provided notice, with respect to the Child Care Program, provide notification to local elected officials and legislative representatives. In each case, provide telephonic notice followed by a fax of the notification letter mailed to the client's responsible representatives. Mail a copy of the Accusation within the next twenty-four (24) hours. Give consideration to the need to provide notification to other elected officials including mayors, city council members, and members of Boards of Supervisors. The Regional Office will develop and maintain current lists of local officials and

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) **1-1190**

legislative representatives for notification in the event of service of a Temporary Suspension Order.

Office of Public Affairs and Outreach Programs: At the time the Temporary Suspension Order is approved, the Program Office will notify the Department's Office of Public Affairs and Outreach Programs if there has been or there is an expectation of media contact.

C. Actions Against Unlicensed Facilities

Except for Family Child Care Homes, a Notice of Operation in Violation of Law must be issued to the facility operator at the time the unlicensed operation is verified. For Family Child Care Homes, the care provider is advised in a licensing field report of the need to apply for a license. The facility has fifteen (15) days after the issuance of the Notice of Operation in Violation of Law to submit an application or cease operating.

Send a second Notice of Operation in Violation of Law to the facility when the provider fails to cease operating and an application is not received on the sixteenth (16th) day after issuance of the Notice of Operation in Violation of Law, or when the application is denied.

If imminent danger is identified in an unlicensed facility, the Regional Office will contact the Legal Division to determine if a Temporary Suspension Order or injunction should be sought. The Regional Office will also inform placement agencies and Protective Services that the facility is unlicensed, so that the agencies can determine if clients in care should remain in the unlicensed environment. The decision to seek a Temporary Suspension Order or injunction, or assist a placement or protective agency to remove clients from an unlicensed facility, is made by the Regional Manager in consultation with the Assistant Program Administrator or Program Administrator and Deputy Director, and the Legal Division.

Unlicensed care providers may be unwilling or unable to share information regarding contacts for responsible parties for clients in care. Licensing staff will request that contact information be provided and contact the Legal Division if the care provider refuses to cooperate.

1. Notifying Family Members and Placement Agencies

Within one (1) day of issuing the Notice of Operation in Violation of Law, send copies of the Notice of Operation in Violation of Law and the related correspondence to identified responsible parties and clients except when no client files are available in unlicensed facilities. (See sample letter below.)

The Regional Office will contact all responsible parties and other entities identified forty-eight (48) hours prior to making a referral to the Attorney General

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) **1-1190**

or the District Attorney or any other designated local authority for an injunction or criminal prosecution, or both. (See sample letter below.)

2. General Notifications

California Department of Social Services Office of Public Affairs and Outreach Programs: The Program Office notifies the Office of Public Affairs and Outreach Programs at the time when the decision is made to seek an injunction or Temporary Restraining Order.

Local elected officials and legislative representatives: The Regional Office will call local elected officials and legislative representatives on the day that family members and other responsible parties are notified. Once a decision is made to obtain an injunction or restraining order, send a copy of the Notice of Operation in Violation of Law and the letter sent to responsible parties to local elected officials and legislative representatives.

Owner of the property: The Regional Office should contact the County Recorder's Office to verify the identity of the owner of the property, and then send the owner a copy of the Notice of Operation in Violation of Law.

D. Decision and Order Resulting from Revocation

Decisions and orders will state when they become effective. The Legal Division will notify the Program Office, Assistant Program Administrator or Program Administrator when a proposed Administrative Law Judge's closure decision is received from the Office of Administrative Hearings. This allows time for offices to verify that the facility is still operating, to develop a closure plan, and to update contact lists.

1. Notifying Family Members and Placement Agencies

The Legal Division will also contact the Regional Office when the Decision and Order has been signed. After such notification is received, the Regional Office will begin notifying responsible parties as follows:

- Facility in operation with clients in care: When the Regional Office receives the signed Decision and Order, it shall immediately begin the notification process. At a minimum, provide notification to agencies and individuals identified in the Department's Plan. (See sample letters below).

- Facility in operation with no clients in care: The Regional Office will identify the appropriate entities to be notified based on the situation.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) **1-1190**

2. Notifying Other Agencies

At a minimum, for adult and elderly facilities, the local Long-Term Care Ombudsman and Adult Protective Services will be notified. The following agencies may not need to be involved in the Department's Plan, but will be notified as soon as closure action is taken:

- Child Care: Notify the California Department of Education, Child Development Division and Child Care Food Program, and local County Welfare Department as soon as possible within twenty-four (24) hours of the time of service of a closure action or decision.

- Adult and Elderly Care: State Department of Health Care Services – Licensing and Certification, State Department of Health Care Services – Long-Term Care Division (if any clients participate in the Assisted Living Waiver Program), County Medi-Cal, Department of Developmental Services, the Social Security Administration, and the State Long-Term Care Ombudsman will be notified of a closure action or decision as soon as possible within twenty-four (24) hours of the time of service.

- Children's Residential: The California Department of Social Services Foster Care Branch Chief and the California Department of Education will be notified as soon as possible within twenty-four (24) hours of the time of service.

3. General Notifications

For the Child Care Program, the Regional Manager should call local elected officials and legislative representatives on the day that family members and responsible representatives are notified. For the Children's Residential Program and Adult and Senior Care Program, call the Office of Legislation on the day that family members and responsible representatives are notified. In each case, upon receiving notice that the order has been signed, forward a copy of the proposed Decision and Order and a copy of the letter sent to responsible parties.

Office of Public Affairs and Outreach Programs: For the Child Care Program, Regional Manager notifies the Department's Office of Public Affairs and Outreach Programs when the Decision and Order is signed. For the Children's Residential Program and Adult and Senior Care Program, Program Office notifies the Department's Office of Public Affairs and Outreach Programs when the Decision and Order is signed.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) 1-1190

E. Decision and Order Resulting from Stipulated Agreements

Decisions and Orders resulting from stipulated agreements that involve closure of a facility will become effective on a specific date identified in the settlement. The effective date will be no earlier than ten (10) days after the Decision and Order is signed. This will allow time for offices to verify that the facility is still operating, to develop a closure plan, and to update contact lists.

1. Notifying Family Members and Placement Agencies

The Legal Division will contact the Regional Office when a Decision and Order has been signed. The Regional Office will then begin notifying responsible parties as follows:

- Facility in operation with clients in care: At the time the Regional Office receives the notice that the Decision and Order has been signed, they shall immediately begin the notification process. At a minimum, notification should be provided to agencies and individuals identified in the Department's Plan. A sample letter has been developed for this purpose.

- Facility in operation with no clients in care: The Regional Office should identify the appropriate entities to be notified based on the situation. At a minimum, for adult and elderly facilities, the Ombudsman and Adult Protective Services should be notified.

2. Notifying Other Agencies

The following agencies may not need to be involved in the Department's Facility Closure Plan, but require notification upon completion of any action that is taken.

- Child Care: The California Department of Education, Child Development Division and Child Care Food Program, and local County Welfare Department will be notified as soon as possible within twenty-four (24) hours of service.

- Adult and Elderly Care: State Department of Health Care Services – Licensing and Certification, State Department of Health Care Services – Long-Term Care Division (if any clients participate in the Assisted Living Waiver Program), County Medi-Cal, the Social Security Administration, and the State Long-Term Care Ombudsman (as appropriate) will be notified as soon as possible within twenty-four (24) hours of service.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) **1-1190**

- Children's Residential: The California Department of Social Services Foster Care Branch Chief and the California Department of Education will be notified as soon as possible within twenty-four (24) hours of the time of service.

3. General Notifications

For the Child Care Program, the Regional Manager should call local elected officials and legislative representatives on the day that family members and responsible representatives are notified. For the Children's Residential Program and Adult and Senior Care Program, call the Office of Legislation on the day that family members and responsible representatives are notified. In each case, upon receiving notice that the order has been signed, forward a copy of the proposed Decision and Order and letter sent to responsible parties.

California Department of Social Services Office of Public Affairs and Outreach Programs: Regional Manager notifies Office of Public Affairs and Outreach Programs at the time the Decision and Order is signed.

III. GENERAL RELOCATION PROCEDURES

A. Scheduling of Effective Date for Facility Closure:

The effective date of a licensing action shall be set with consideration to allow as much time as possible for the orderly transfer and relocation of clients with minimal disruption for the clients and their family members. In all cases, the effective date for closure of a facility shall be scheduled no earlier than twenty-four (24) hours after notice is provided to placement agencies, clients and family members. Normally, this will mean that even in the case of a Temporary Suspension Order, the facility will be authorized to continue operation for twenty-four (24) hours or more (as provided on the order) after such notification is provided. In some cases involving a Temporary Suspension Order, notification to family members may be made prior to the date of service. In determining the amount of advance notice to be given consideration should include several factors such as the size of the facility and the specific circumstances, including, but not limited to, whether or not clients have responsible parties who can assist in placement, any health and safety concerns, specific health conditions of clients, the number of clients receiving Supplemental Security Income, and the involvement of local agencies. In such cases, the action to close the facility can be effective on the date of service.

If there is reason to believe that any client identified in an investigation is likely to be subject to continued or future physical harm by remaining in the facility for additional time, it may be appropriate to contact representatives for that client earlier to provide for immediate transfer and relocation.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) 1-1190

B. Staffing the Relocation Process:

If necessary, the Regional Manager (or county equivalent) will be present at the facility during the relocation process, and will be responsible for coordinating all activities. In the case of a Temporary Suspension Order, this will mean that the Regional Manager must be present at the facility on the date of service of the Temporary Suspension Order and, if necessary, the day clients are relocated.

Licensing staff will request that representatives from placement and Protective Services agencies, as well as clients' authorized representatives, are present at the facility at the time of transfer and relocation. Arrangements shall be made to ensure that sufficient licensing staff (including Regional Office staff and Investigators) are present to provide appropriate notification and to assist with transfer and relocation. Law enforcement, county health department officials and medical personnel may also be scheduled to be available depending on the circumstances of the action. The Department should negotiate with the consultant group well in advance and prior to the service of the Temporary Suspension Order in the event that a consultant group is used in the relocation process. This will enable the group to hire adequate staff to meet clients' needs.

SAMPLE LETTERS OF NOTIFICATION

The letters contained in this section are intended as sample letters. Actual letters will contain information on the specific actions to be taken and will need to be modified for a specific audience. Keep in mind that any letters sent to the general public will often be shared with local and State legislative representatives as well as the media. A well-written letter meeting the requirements set forth below will continue to send the message that the Licensing Agency is acting in a responsible and respectful manner. Letters should be developed based on the following guidelines:

- All letters must convey the supportive tone and the "non-bureaucratic" style of the sample letters.
- All letters to persons in care, parents or other family members must start with a brief description of the role of the Licensing Agency.
- In describing the action to be taken, use terms that can be easily understood.
- Timeframes for the actions should be as specific as possible.
- The letter should identify persons or agencies that can be of assistance, including a phone number to call.
- The letter should provide a contact number for the Licensing Office to respond to any questions.

1-1190 FACILITY CLOSURES, NOTIFICATION AND CLIENT RELOCATION (Continued) **1-1190**

- All letters to persons in care must be signed by the Regional Manager or delegate.

- For the Adult and Senior Care Program, staff should personally hand serve the letters of notification to each client or resident and discuss resources and options to assist clients or residents in relocation.

The following sample letters are included in this section:

1. Notification for Child Care Temporary Suspension Order.

2. Notification for Residential Temporary Suspension Order.

3. Notification for Residential Care Facility for the Elderly Temporary Suspension Order.

4. Notification of Unlicensed Facility (first notice).

5. Decision and Order.

SAMPLE NOTIFICATION LETTER: TEMPORARY SUSPENSION ORDER

CHILD CARE FACILITY

(Date)

Dear Child Care Parent:

The Department of Social Services, Community Care Licensing Division is responsible for licensing and monitoring Family Child Care Homes and Child Care Centers. Our goal is to protect the health and safety of children who are receiving child care in another person's home or out-of-home care. When it is determined that there is an immediate health and safety risk to children, the Department has the authority to immediately close a child care home. This action is called a Temporary Suspension Order (TSO).

The Department has determined that there is an immediate risk to children in care at ABC Child Care Center at 200 Pine Ave., Orange Town, California, 95000. This is to inform you that a Temporary Suspension Order is being served today on (date). This closure will be effective (date).

Because the suspension order prohibits the ABC Child Care Center from operating after (date), we have arranged to assist you in locating other care arrangements for your child. The Child Action Resource and Referral Agency is prepared to work with you over the next few days to find alternate child care that meets your needs. You may contact Susan Smith at (916) 300-0000 for assistance. She is prepared to take your call and work with you immediately.

We regret any distress or inconvenience this action may cause you or your child. However, it is necessary for the protection of children in care. If you have any questions, please contact me at (telephone number).

Sincerely,

_____, Regional Manager

_____

Name of Office

Attachment

SAMPLE NOTIFICATION LETTER: TEMPORARY SUSPENSION ORDER

RESIDENTIAL

(Note: If a client refuses to leave the facility, the Licensing Program Analyst may amend this letter after the Administrative Action and send an additional reminder to the client.)

(Date)

Dear Resident or Family member:

The Department of Social Services, Community Care Licensing Division is responsible for licensing and monitoring residential care facilities. Our goal is to protect the health and safety of elderly who are receiving out-of-home care. The Department has the authority to immediately close a facility when it has determined that there is an immediate health and safety risk to clients.

The purpose of this letter is to notify you that the Department will serve (name of facility) with a legal document called a Temporary Suspension Order. This document requires the facility to close on (date). The Department took this action after determining that clients in care at this facility are of immediate risk of neglect or abuse, or otherwise in immediate danger.

We are notifying you of this action because the facility records identify you as a relative or other authorized representative for a client in care at (name of facility). Enclosed with this notice is a copy of the accusation originally filed against this facility. The accusation lists the conditions at the facility that resulted in our need to take this action.

The urgency of this situation made it impossible for us to provide you with any more advance notice. Our staff attempted to telephone all relatives for whom phone numbers were available. It is our hope that we were able to reach you ahead of time in this way.

Because this action will prohibit the facility from operating after (date), enclosed is a listing of other licensed care facilities in the area that you may wish to contact for assistance in relocating yourself or your loved one. Once that action occurs, this facility will no longer be licensed by the Department of Social Services.

We regret any distress or inconvenience this action may have caused you or your family. If you have any questions or would like additional referral information, please contact me at (facility telephone number).

Sincerely,

_____, Regional Manager

_____

Name of Office

Attachment

SAMPLE NOTIFICATION LETTER: TEMPORARY SUSPENSION ORDER

RESIDENTIAL (RCFE)

(Date)

Dear Resident or Family Member:

The Department of Social Services, Community Care Licensing Division is responsible for licensing and monitoring residential care facilities for the elderly. Our goal is to protect the health and safety of elderly who are receiving out-of-home care. The Department has the authority to immediately close a facility when it has determined that there is an immediate health and safety risk to clients.

The purpose of this letter is to notify you that the Department will serve (name of facility) with a legal document called a Temporary Suspension Order. This document requires the facility to close on (date). The Department took this action after determining that clients in care at this facility are of immediate risk of neglect or abuse, or otherwise in immediate danger.

We are notifying you of this action because the facility records identify you as a relative or other authorized representative for a client in care at (name of facility). Enclosed with this notice is a copy of the accusation originally filed against this facility. The accusation lists the conditions at the facility that resulted in our need to take this action.

The urgency of this situation made it impossible for us to provide you with any more advance notice. Our staff attempted to telephone all relatives for whom phone numbers were available. It is our hope that we were able to reach you ahead of time in this way.

Because this action will prohibit the facility from operating after (date), enclosed is a listing of other licensed care facilities in the area that you may wish to contact for assistance in relocating yourself or your loved one.

We regret any distress or inconvenience this action may have caused you or your family. If you have any questions or would like additional referral information, please contact me at (facility telephone number).

Sincerely,

_____, Regional Manager

_____

Name of Office

Attachment

SAMPLE NOTIFICATION LETTER:

UNLICENSED FACILITY

(Note: This letter shall not be used for Child Care, and will only be used when applicable.)

(Date)

Dear Resident or Family Member:

The Department of Social Services, Community Care Licensing Division is responsible for licensing and monitoring out-of-home care. Our goal is to protect the health and safety of clients who are receiving care in another person's home or out-of-home care. The Department has completed an investigation of (name of facility) located at (address of facility) and determined that this facility is operating and providing care to clients without a license. This operation violates sections of the criminal, civil, and administrative laws of California.

We are notifying you of this because we understand you may have a relative or other loved one residing at this facility. The Department has given the care provider, two options:

1. Stop providing care.
2. File an application within 15 days to become licensed.

If the operator of the facility files an application, we will process it and make a decision on whether to grant a license to operate as soon as possible. If the operator does not file an application within the fifteen (15) day time period, we will be required to seek action through the local District Attorney or the Attorney General's office. Even though an application is filed, the Department may not approve it.

If you wish to find a different facility, the Department will provide you with a list of licensed facilities and agencies that may be able to assist you in finding a suitable placement. Please contact me at (facility telephone number) if you wish further assistance.

Sincerely,

_____, Regional Manager

_____

Name of Office

Attachment

SAMPLE NOTIFICATION LETTER:

DECISION AND ORDER

(Date)

Dear Resident or Family Member:

On (date), the California Department of Social Services, Community Care Licensing Division notified you that an accusation was issued against (name of facility). The Department began legal action against the facility to protect the health and safety of clients in care. The Department has now received the decision from an Administrative Law Judge that revokes the license of (name of facility).

We are notifying you of this decision because facility records identify you as a relative or other authorized representative for a client in care at the facility. A prior letter included a copy of the accusation originally filed against this facility so you can see the reasons why the Department requested that the facility be closed.

The closure will be effective on (date). Please contact me at (facility telephone number) in order to obtain lists of other licensed facilities in the area or be referred to local placement agencies that may assist you in relocating yourself or your loved one.

Sincerely,

_____, Regional Manager

_____

Name of Office

Attachment

1-1195 DEPARTMENT'S FACILITY CLOSURE PLAN 1-1195

The following shall be used prior to, during and after any Administrative Action that results in the relocation of clients. The following provides a documentation record and guide to assist staff in organizing and assigning various tasks.

Facility Name _____ License _____

Address _____

Telephone _____

License Category ____ _____

Licensee Name _____ Telephone _____

Address _____

Proposed Admin. Action: TSO___ Unlic. Facility _____ Dec. & Order____

Proposed Date _____

Proposed Closure Date If Different _____

CCLD Attorney _____ Telephone _____

Client Type (Check All That Apply)

[ ] Children (Number) _____ [ ] Developmental Disability No. _____

[ ] Adults (Number) _____ [ ] Mental Disability No. _____

[ ] Elderly (Number) _____ [ ] Non-ambulatory (Number)

Total Number of Clients _____ Date Roster Obtained _____

Update Needed? [ ] Yes [ ] No _____ Date _____

1-1195 DEPARTMENT'S FACILITY CLOSURE PLAN (Continued) **1-1195**

Agencies to be involved. (Check all that apply and complete information.) Refer to Reference Material, Enforcement Actions, Section 1-1245 for information on agencies.

[ ] DPSS/Child Contact _____

Telephone # _____ Date Called _____

[ ] APS or CPS Contact _____

Telephone # _____ Date Called _____

[ ] Public Guardian/Conservator Contact _____

Telephone # _____ Date Called _____

[ ] SSA Contact _____

Telephone # _____ Date Called _____

[ ] Mental Health/Crisis Team Contact _____

Telephone # _____ Date Called _____

[ ] Regional Center Contact _____

Telephone # _____ Date Called _____

[ ] Local Long-Term Care Ombudsman Contact _____

Telephone # _____ Date Called _____

[ ] DHCS Licensing & Certification Contact _____

Telephone # _____ Date Called _____

[ ] Medical Consultant Contact _____

Telephone # _____ Date Called _____

1-1195 DEPARTMENT'S FACILITY CLOSURE PLAN (Continued) **1-1195**

[ ] County Probation Contact _____

Telephone # _____ Date Called _____

[ ] Foster Care Placement Contact _____

Telephone # _____ Date Called _____

[ ] Resource & Referral Agency Contact _____

Telephone # _____ Date Called _____

[ ] CDE – Child Development Contact _____

Telephone # _____ Date Called _____

[ ] Child Care Food Program Contact _____

Telephone # _____ Date Called _____

[ ] Law Enforcement Contact _____

Telephone # _____ Date Called _____

[ ] Other Contact _____

Telephone # _____ Date Called _____

Planning/Strategy Meetings

Date/Time	Location	Agenda

Overtime Needed [ ] Yes [ ] No RO Staff Names _____

1-1195 DEPARTMENT'S FACILITY CLOSURE PLAN (Continued) **1-1195**

FOR ALL CLOSURE ACTIONS WHERE CLIENTS ARE IN CARE, EITHER THE REGIONAL OR PROGRAM ADMINISTRATOR SHALL BE ON SITE AND SHALL PERSONALLY SERVE THE ACTION AND ANSWER MEDIA INQUIRIES.

RO Staff Teams		Major Task
LPM	_____	_____
Lead LPA	_____	_____
LPA(s)	_____	_____
Investigator	_____	_____
Support Staff	_____	_____
Attorney	_____	_____

Resident Planning & Relocation	Agency/Person Responsible
Team Leader/Coordinator	_____
Service of Accusation/TSO	_____
Locate Facilities	_____
Arrange Clients' Transportation	_____
Handle Clients' Funds Issues	_____
Competency Hearings	_____
Log & Track Clients	_____
Contact Relatives	_____
Screen/Interview Clients	_____
Take Declarations (Regional Office)	_____

1-1195 DEPARTMENT'S FACILITY CLOSURE PLAN (Continued) **1-1195**

Take Photographs (RO) _____

Clients' Belongings _____

Clients' Medications _____

Clients' Meals _____

Clients' Records _____

Change of Address Cards _____

Licensing Reports (RO) _____

Supplies/Other _____

Assignment Areas At Facility (Attach Copy Of Facility Sketch If Needed)

Task	Location

Meeting Place Prior to Closure Action _____ Time _____

Meeting Place After Closure Action _____ Time _____

Media/Public Contacts:

Refer To _____ At the Facility

Regional or Program Administrator

Refer To _____ At the RO/Program Office

Regional or Program Administrator

1-1195 DEPARTMENT'S FACILITY CLOSURE PLAN (Continued) **1-1195**

Media Sources Interested: TV/Radio/Newspaper

Name

_____ _____

Wrap Up: Clients All Out? [ ] Yes [ ] No

Parents/Guardians/Representatives Contacted? [ ] Yes [ ] No

Copies Of Accusation To Parents/Guardians/Representatives? [ ] Yes [ ] No

Names, If Not _____

_____

Notices To Representatives Sent By _____ Date _____

Follow-up Needed _____

_____

Notice to all entities identified in this planning guide and specified in Section 1-1190,

Facility Closure Plan _____ Date: _____

Follow-up Needed

_____

_____

Prepared By _____ Date _____

*** AVAILABLE IN COMMON LIBRARY**

1-1196 OUT-OF-STATE ADMINISTRATIVE ACTION NOTIFICATION 1-1196

The purpose of this section is to ensure that Community Care Licensing Division Regional Offices notify the appropriate out-of-state licensing agency when they become aware that a licensee or administrator or other facility employee, who has had an Administrative Action filed against him or her, is moving to that state. The notification is intended to alert the out-of-state licensing agency of the licensee/administrator/employee Administrative Action history in the event that the individual applies for a license in that state. When the Regional Office becomes aware that the licensee/administrator is moving to another state, notification shall be sent to the appropriate state licensing agency informing them of the Administrative Action and other public licensing information.

If Administrative Action information is requested by the other state, Regional Offices are authorized to share the following types of information:

- Accusations
- Witness lists prepared post hearing or submitted at a pre-hearing conference
- Licensing reports that are public
- Complaint investigation findings that are public
- Decisions and orders
- Incident reports with names and other confidential information redacted

All licensing formation sent to out-of-state licensing agencies should be thoroughly reviewed at the Licensing Program Manager level to ensure that it does not contain confidential information that by law cannot be shared. The Department's Legal Division is also available to assist the Regional Office in responding to out-of-state requests for Administrative Action information.

Regional Offices can obtain contact information for other state licensing agencies through the National Association of Regulatory Administration's (NARA) website. The website has a national registry link to all state licensing offices. The NARA website can be accessed at www.naralicensing.org.

1-1197 INTRA-AGENCY ADMINISTRATIVE ACTION NOTICE 1-1197

The purpose of this section is to ensure that Community Care Licensing Division Regional Offices notify related Intra-Agency Departments when a licensee or administrator or other facility employee has had an Administrative Action filed against him or her. The notification is intended to ensure that related Departments have information necessary to initiate corrective actions of their own, if applicable. When the Legal Division files an Administrative Action against a licensee/administrator/employee, the Regional Office shall notify applicable Intra-Agency Departments and provide them with other public licensing information. In cases where a Memorandum of Understanding (MOU) exists, its terms should be reviewed to ensure that all required information is provided.

1-1197 INTRA-AGENCY ADMINISTRATIVE ACTION NOTICE (Continued) **1-1197**

If Administrative Action information beyond what is identified in a Memorandum of Understanding is requested by Intra-Agency Departments, Regional Offices are authorized to share the following types of information:

- Accusations
- Witness lists prepared post hearing or submitted at a pre-hearing conference
- Licensing reports that are public
- Complaint investigation findings that are public
- Decisions and Orders
- Incident reports with names and other confidential information redacted

All licensing information sent to Intra-Agency Departments should be thoroughly reviewed at the Licensing Program Manager level to ensure that it does not contain confidential information that by law cannot be shared. The Department's Legal Division is also available to assist the Regional Office in responding to Intra-Agency requests for Administrative Action information.

1-1200 TEMPORARY SUSPENSION ORDERS 1-1200

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

A Temporary Suspension Order is an order signed by a Deputy Director, usually the Deputy Director of Licensing, or someone delegated by the Deputy Director of Licensing, suspending a license in order to protect clients from physical or mental abuse, abandonment or any other substantial threat to their health and safety. Temporary Suspension Orders involving children's residential facilities should also be approved by the Children and Family Services Division. Refer to Reference Material, Complaints, Section 3-2628 for details.

Temporary Suspension Orders are pursued in conjunction with revocation actions. In a revocation action, the licensee has the legal right to continue to operate unless an immediate health or safety hazard exists.

A Temporary Suspension Order may be sought when an immediate health or safety hazard exists in a facility and the operation must be closed immediately. A Temporary Suspension Order may be sought in conjunction with an investigation report or may result from an action taken collaterally such as the denial of a fire clearance. The Temporary Suspension Order will specify an effective date when the facility must cease operations. The effective date will be established by the Deputy Director or designee, based upon the recommendation of the Regional Office, Statewide Program Office and Legal Division staff, taking into consideration the size of the facility and specific circumstances. In addition, refer to Reference Material, Enforcement Actions, Section 1-1220.

1-1205 NECESSITY FOR A TEMPORARY SUSPENSION ORDER 1-1205

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

Prior to requesting a Temporary Suspension Order, the Licensing Agency shall consider the necessity of such an action based on Health and Safety Code Sections 1550, 1569.50, 1568.082 and 1596.885. If you are reading this section because you have a facility problem and are wondering whether a Temporary Suspension Order is appropriate, discuss the case with your Licensing Program Manager, Regional Manager and the Licensing Office's assigned Legal Consultant. Counties will also consult with their Program County Liaison.

Factors to be considered in assessing whether an immediate substantial health or safety risk exists include but are not limited to:

1. Is there danger to the health, welfare or safety of the clients in care? If so, a Temporary Suspension Order recommendation may be appropriate.

    a. Is the danger serious?

1-1205 NECESSITY FOR A TEMPORARY SUSPENSION ORDER (Continued) **1-1205**

b. Is the danger imminent?

c. Is the danger likely to reoccur?

2. Are clients in danger of abandonment or serious neglect, or have they been abandoned or seriously neglected? If so, a Temporary Suspension Order recommendation may be appropriate.

3. Are facility personnel present who have been involved in the abuse, neglect or provision of inappropriate or unsatisfactory care of the client? If so, consider number four below.

4. Can the danger be eliminated by excluding a staff, volunteer, outsider or client from the facility? (See Reference Material, Enforcement Actions, Sections 1-1415 and 1-1450.)

   a. Under most circumstances the licensee cannot be excluded from the facility because the licensee must be responsible for everything that goes on in the facility. A case where it might be appropriate would be when there is more than one licensee.

   b. Under most circumstances it is inappropriate to order a licensee removed from his/her own home.

   c. Under most circumstances it is inappropriate to order the licensee to exclude his/her spouse or minor children from a facility that is his/her home.

5. Is there any other way to protect present and future clients? If not, then a Temporary Suspension Order recommendation may be appropriate. If so, a Temporary Suspension Order recommendation still may be appropriate, depending on other factors.

6. Is the facility still operating and/or could new clients be placed in the facility?

   a. If the license has been forfeited or surrendered, and the facility has in fact stopped operating and has no clients, a Temporary Suspension Order is not necessary or legally feasible. An immediate referral for revocation for the record, however, should be made.

1-1205 NECESSITY FOR A TEMPORARY SUSPENSION ORDER (Continued) **1-1205**

b. If the Licensing Agency subsequently becomes aware that the licensee may be operating without a license (for example, an ad is placed in a supermarket offering day care), an injunction or referral to the District Attorney for criminal prosecution should be requested immediately.

c. If the facility is legally entitled to operate (that is, the license was not surrendered or forfeited, the licensee still has possession of the license and the property is not abandoned), then a Temporary Suspension Order may be warranted because of the possibility of the licensee reopening the facility, or accepting clients, without the Department's knowledge.

7. Is there serious potential danger to the clients in the facility as evidenced by such things as:

a. Violent or dangerous act(s) committed against persons outside the facility by licensees, staff or other persons residing in or with access to the facility.

b. Violent or dangerous act(s) committed against anyone in the facility, including the spouse or child of the licensee, by licensees, staff or other person residing in or with access to the facility.

c. Violent or dangerous act(s) committed in front of clients, by the licensees, staff or others with access to the facility.

If so, a Temporary Suspension Order recommendation may be appropriate.

8. What is the licensee's culpability in the event(s)?

a. Did the licensee know about the event(s) and fail or refuse to act appropriately to avoid or prevent the event(s)? If so, a Temporary Suspension Order recommendation may be appropriate.

b. Should the licensee have known about the event(s) and taken action to avoid or prevent the event(s)? If so, a Temporary Suspension Order recommendation may be appropriate.

c. What is the licensee's demonstrated willingness to appropriately control such event(s) in the future? Actions, rather than promises, should be examined here. Has there been inaction or inappropriate action? If so, a Temporary Suspension Order recommendation may be appropriate.

1-1205 NECESSITY FOR A TEMPORARY SUSPENSION ORDER (Continued) **1-1205**

d. What is the licensee's capability to appropriately control such event(s) in the future? A lack of control supports a Temporary Suspension Order recommendation.

e. What is the licensee's history on these issues? A history of previous similar incidents support a conclusion that the licensee should have acted sooner to avoid or prevent the event(s) and that a Temporary Suspension Order recommendation is appropriate.

9. What are the number, frequency, and seriousness of the incidents?

a. One serious incident, physical or sexual abuse for example, is often enough to warrant a Temporary Suspension Order recommendation.

b. Is the most recent incident one in a pattern of similar incidents? The last incident, alone, may not appear to be sufficient, but taken as a pattern of conduct a Temporary Suspension Order recommendation may be warranted.

10. Has the licensee, a staff member, volunteer, client or outsider with access to the facility been arrested for and/or convicted of any of the crimes for which an exemption cannot be granted? Conviction information and arrest information (if the arrest information is supported by other evidence, such as statements from competent witnesses) usually is a sufficient basis for a Temporary Suspension Order recommendation.

a. For residential community care facilities and Adult Day Programs, see Health and Safety Code Section 1522(f)(1).

b. For Child Care Centers and Family Child Care Homes, see Health and Safety Code Section 1596.8897(g).

c. For Residential Care Facilities for the Elderly, see Health and Safety Code Section 1569.17(e)(1).

d. For Residential Care Facilities for the Chronically Ill, see Health and Safety Code Section 1568.09(e)(1).

1-1205 NECESSITY FOR A TEMPORARY SUSPENSION ORDER (Continued) **1-1205**

11. Is there evidence that a death or serious injury occurred because of abuse or willful neglect by the personnel of the facility? If so, refer back to numbers four and nine.

    a. At a Child Care Center or Family Child Care Home, a Temporary Suspension Order must be issued within two working days of receipt of evidence that the death or serious injury was due to abuse or willful neglect by the licensee or facility personnel. (See Health and Safety Code Section 1596.8865.)

    b. As used in Health and Safety Code Section 1596.8865, "serious injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion, bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

12. The passage of time since a serious incident occurred does not necessarily make a Temporary Suspension Order recommendation inappropriate, nor does time between a serious incident and the receipt of a complaint about that incident, alter the requirement that it be investigated immediately.

    a. If the incident is serious enough to warrant a Temporary Suspension Order, a Temporary Suspension Order recommendation should be made, regardless of the length of time since the incident(s) occurred.

13. If a fire clearance is required by the facility category and the facility is operating without a fire clearance a Temporary Suspension Order recommendation must be made unless an immediate call to the fire authority verifies that an immediate correction is possible to rescind the fire clearance denial and the licensee agrees to take immediate corrective action. If this is not clearly the case, make the Temporary Suspension Order referral.

NOTE: Size and type of facility, and potential transfer trauma are significant questions to be considered in the implementation of a Temporary Suspension Order. (See Reference Material, Enforcement Actions, Section 1-1190 and Sections 1-1235 through 1-1270.)

1-1205 NECESSITY FOR A TEMPORARY SUSPENSION ORDER (Continued) **1-1205**

Allegations, which require additional investigation, should be referred by Regional Offices to the Investigations Branch. (Refer to Reference Material, Enforcement Actions, Section 1-0600.) Depending upon the nature of the allegation, the Investigations Branch and the Regional Office may work in conjunction to develop the essential documents for a Temporary Suspension Order and revocation.

When it is determined that a Temporary Suspension Order may be appropriate, see Reference Material, Enforcement Actions, Section 1-1211.

1-1210 TELEPHONE TEMPORARY SUSPENSION ORDERS **1-1210**

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

A telephone Temporary Suspension Order is a method to refer a case immediately to the Department's Legal Division when expedited legal services or investigative consultation is required in cases involving major and immediate risks to clients in care. The decision to request a telephone Temporary Suspension Order is made by the Assistant Program Administrator or Program Administrator or delegate in consultation with the Deputy General Counsel or delegate assigned to the particular Program.

A telephone Temporary Suspension Order is warranted under the following circumstance:

1. There is a major and immediate risk to clients in care and the circumstances of the case are urgent enough to warrant an immediate mobilization of the Department's Temporary Suspension Order authority.

The Licensing Office's assigned Legal Consultant should be alerted to the possibility of a telephone Temporary Suspension Order as soon as possible or whenever there is a major investigation in process which may result in a Temporary Suspension Order being required and the services of an attorney would assist in the resolution of the investigation.

The determination of whether a case is appropriate for a telephone Temporary Suspension Order is made on a case-by-case basis. Factors to be considered:

1. Is the alleged perpetrator or dangerous condition still present in the home or facility?

2. How provable are the allegation now?

3. Will more time for an investigation improve the ability of the Department to prove the allegation?

1-1210 TELEPHONE TEMPORARY SUSPENSION ORDERS (Continued) 1-1210

When referring the matter for a telephone Temporary Suspension Order, the Regional Office staff should be prepared to discuss the alleged violations and evidence establishing the risk of harm; to identify the names and locations of key witnesses; to summarize the history of the facility and the licensee; and to estimate when the Regional Office can serve the Temporary Suspension Order and assist in its implementation. For community care facilities, Regional Office staff must be able to estimate probability of obtaining evidence as needed for the interim Hearing. (See Reference Material, Enforcement Actions, Section 1-1215.) DO NOT DELAY MAKING THE TELEPHONE TEMPORARY SUSPENSION ORDER REFERRAL BECAUSE YOU HAVE NOT OBTAINED DECLARATIONS. The necessity of declarations can be discussed with the assigned attorney. After the telephone Temporary Suspension Order is approved (see Reference Material, Enforcement Actions, Section 1-1211) and served, the Licensing Office must prepare and submit a Statement of Facts within two working days of telephone approval to complete the record and to advise the Assistant Program Administrator or Program Administrator and the Legal Division of any other relevant information.

1-1211 TEMPORARY SUSPENSION ORDER PROCESS 1-1211

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

The following procedures must be used when a Temporary Suspension Order is appropriate:

1. The Licensing Program Analyst and the Licensing Program Manager are responsible for bringing to the attention of the Regional Manager all cases that may warrant a Temporary Suspension Order.

2. The Regional Manager will consult with the Licensing Office's assigned Legal Consultant on whether the case is appropriate for a Temporary Suspension Order.

3. Counties must consult with their assigned Legal Consultant and the Program County Liaison regarding a possible Temporary Suspension Order.

4. See Reference Material, Enforcement Actions, Section 1-1140.

TELEPHONE TEMPORARY SUSPENSION ORDER PROCESS

In addition to the above, the following steps apply to telephone Temporary Suspension Orders:

1-1211 TEMPORARY SUSPENSION ORDER PROCESS (Continued) **1-1211**

5. For telephone Temporary Suspension Orders, the Regional Manager must discuss the matter with the Assistant Program Administrator or Program Administrator or delegate and obtain the approval to move forward with the process.

6. If it is agreed to handle the case as a telephone Temporary Suspension Order:

   a. The Assistant Program Administrator or Program Administrator or delegate must contact the Deputy General Counsel or delegate for the Program. The facts and evidence are discussed. Additional evidence that is needed will be identified.

      1. The Regional or County Office's assigned Legal Consultant may also brief the Deputy General Counsel or delegate.

   b. The Deputy General Counsel or delegate immediately assigns an attorney and informs the Regional Manager of the attorney assigned to prosecute the case.

   c. The Regional Manager contacts the Statewide Program Office to obtain a legal case number and immediately provides the number to the attorney assigned to prosecute the case.

7. The attorney assigned will immediately contact the Licensing Office staff assigned to the case.

8. The Licensing Office staff provides required documentation to the assigned attorney by FAX or hand delivery depending on the situation. Licensing staff will check the Licensing Information System and assure that all appropriate licenses of the licensees, regardless of the region or county where located, are assigned legal case numbers. Statewide Program Office staff will check the Licensing Information System for county cases. A completed Investigations Branch report is not necessary prior to service of a Temporary Suspension Order. This is a team effort, so it is important that Licensing Office staff are available to work on the case.

9. Preparation of the Statement of Facts for a Temporary Suspension Order shall have top priority for all Community Care Licensing Division staff. For a telephone Temporary Suspension Order, the Licensing Program Analyst prepares a Statement of Facts within two working days of telephone approval by the Assistant Program Administrator or Program Administrator or delegate. See Reference Material, Enforcement Actions, Section 1-1140.

10. All communication to the Legal Division on a telephone Temporary Suspension Order must include the assigned attorney's name.

1-1215 TEMPORARY SUSPENSION ORDER INTERIM HEARINGS FOR COMMUNITY CARE FACILITIES 1-1215

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

The following section does NOT apply to Child Care Facilities, Residential Care Facilities for the Chronically Ill or Residential Care Facilities for the Elderly.

Health and Safety Code Section 1550.5(a)(1) requires special procedures in the case of Temporary Suspension Orders for community care facilities. The following types of facilities are governed by the interim hearing procedures: Group Homes, Foster Family Homes, Small Family Homes, Adult Residential Facilities, Adult Day Programs and Social Rehabilitation Facilities, Adoption Agencies and Foster Family Agencies.

The community care facility Temporary Suspension Order is served on the licensee in the same manner as other Temporary Suspension Orders. However, the community care facility Temporary Suspension Order differs from a basic Temporary Suspension Order in three ways. First, the community care facility Temporary Suspension Order has additional documents that must be served with the Temporary Suspension Order.

These documents explain interim hearing rights and procedures to respondents and provide an interim hearing request form. Second, in a community care facility Temporary Suspension Order, there is a right to an interim hearing which does not exist in the basic Temporary Suspension Order. Third, all available discovery must be served with the Temporary Suspension Order.

Community care facility licensees have five days from the date of service of the Temporary Suspension Order in which to request an "interim hearing." Licensees will send interim hearing requests directly to the Office of Administrative Hearings. Neither Statewide Program Offices, Regional Offices, nor county offices may accept interim hearing requests. The interim hearing, which is scheduled and conducted by the Office of Administrative Hearings, must take place within ten working days of the request. The purpose of the interim hearing is to determine whether the Temporary Suspension Order should remain in effect.

NOTE: The respondent may concurrently file a writ in Superior Court to challenge the Department's issuance of a Temporary Suspension Order, while also going through the interim hearing process.

1-1215 TEMPORARY SUSPENSION ORDER INTERIM HEARINGS FOR COMMUNITY CARE FACILITIES (Continued) **1-1215**

The licensee/respondent will have the burden to prove a reasonable likelihood that he/she will prevail at the full evidentiary hearing and will have to prove that the injury to him/her, if the facility remains closed, outweighs the potential harm to the clients/residents if the facility remains open. The Administrative Law Judge may only vacate the Temporary Suspension Order if the respondent proves these two factors.

The Department must provide to the licensee/respondent and the licensee/respondent must provide to the Department, by either overnight delivery or fax, no later than five working days before interim hearing, all available discovery which each party will use at the interim hearing. Available discovery includes: affidavits, declarations, name(s) of witnesses who will testify at the evidentiary hearing and other evidence relied upon to issue the Temporary Suspension Order. No live testimony will be given at the interim hearing. Both the respondent and the Department may use a hearsay statement made by the victim in lieu of an affidavit if the Administrative Law Judge decides that the party has shown circumstances to indicate the trustworthiness of the victim's hearsay statement.

At the conclusion of the hearing the Administrative Law Judge will issue a verbal decision and will issue a written decision within five working days. The Department or licensee/respondent may file a petition for review of the decision, which must be heard by the court within ten days of its filing. The court shall issue its judgment on the petition within ten days of the conclusion of the hearing.

The licensee has the burden at the interim hearing of showing that the Department abused its discretion in issuing the Temporary Suspension Order. Although no persons will testify at the hearing, the licensee will present oral arguments to show that the facts pled in the Accusation are not sufficient for a Temporary Suspension Order to be issued. At the conclusion of the hearing, the Administrative Law Judge issues a verbal interim decision which sustains or vacates the order.

The Licensing Program Analyst normally attends the interim hearing to provide any case information or assistance to the Licensing Attorney. If the licensee contacts the Regional Office with any questions prior to the interim hearing, the Licensing Program Analyst should advise the licensee to contact the Legal Division attorney assigned to the case.

1-1220 TEMPORARY SUSPENSION ORDER EFFECTIVE DATE 1-1220

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

The effective date of the Temporary Suspension Order (the date facility operation must cease) will be established by the Deputy Director, based upon the recommendation of the Regional Office, Statewide Program Office and Legal Division staff.

In providing a recommendation for the effective date of the Temporary Suspension Order the Licensing Agency should take the following factors into consideration:

1. How many clients require removal from the facility to another site?

2. How prepared are the local agencies to make such a move? This is related to the issue of availability of alternative placement sites.

3. On balance, which poses greater risk to the clients – staying at the facility for a few more days or the possible trauma the clients might experience from an abrupt move?

4. How long will it take to serve the Temporary Suspension Order and notify all placement agencies and authorized representatives?

5. For child care facilities, can the Temporary Suspension Order be served on a Thursday to allow maximum time for parents to locate alternative care arrangements?

1-1225 SERVING TEMPORARY SUSPENSION ORDERS UNDER SPECIAL CIRCUMSTANCES (REPEALED APRIL 2000) 1-1225

1-1235 PLANNING PROCEDURES PRIOR TO A TEMPORARY SUSPENSION ORDER 1-1235

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

The Temporary Suspension Order planning procedures are designed to assist staff in the service of a Temporary Suspension Order. Careful planning and coordination can reduce the trauma of a Temporary Suspension Order for residents and for Regional Office staff. The excitement, confusion and stress produced by the sudden removal of a person from his or her home can have serious consequences for the resident. A Temporary Suspension Order should be served only when staying at the facility presents a greater danger to the health and safety of the residents than relocation.

1-1235 PLANNING PROCEDURES PRIOR TO A TEMPORARY SUSPENSION ORDER 1-1235

Some of the routine Temporary Suspension Order planning procedures can be prepared and maintained well in advance, while others will require last minute preparations. The procedures, discussed in the following sections, will begin with those preparations that can be done well in advance and lead into the actual service of a Temporary Suspension Order.

1-1240 TEMPORARY SUSPENSION ORDER MASTER KIT 1-1240

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

Each Regional Office should maintain a readily available master Temporary Suspension Order kit. The following, while not comprehensive, contains the basic items to be included in each kit:

1. Facility Roster
2. Licensing Information System facility lists for relatives and placement agencies
3. Copies of the Temporary Suspension Order for relatives and placement agencies
4. Camera
5. Cellular Phone
6. Business cards for licensing staff
7. Water and cups
8. Large plastic bags and ties (client's property)
9. Assorted sizes of paper bags (evidence and medication bags)
10. Gloves, masking tape, safety pins and stapler
11. Markers, pens and note pads
12. Name tags labels and receipts
13. Boxes for packaging records and personal items of clients
14. Kleenex and toilet paper
15. **LIC Forms Packet:**

    LIC 622 - Centrally Stored Medication and Destruction Record
    LIC 605A - Release of Client/Resident Medical Information
    LIC 811 - Confidential Names
    LIC 859 - Review of Staff/Volunteer
    LIC 858 - Client/Resident Records Review
    LIC 857 - Children's Record Review (child care centers)
    LIC 855 - Declaration
    LIC 813 - Facility Photography report
    LIC 812 - Detail Supportive Information
    LIC 809 - Facility Evaluation Visit Report

1-1245 AGENCY RESOURCE LIST 1-1245

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

The Regional Office must determine the agency resources needed for relocation. Depending upon the payment status (SSI or private pay), existence of a placement agency and conditions of the clients, the Regional Office will need to call upon other agencies to assist in the relocation process. The purpose of coordination is twofold: (1) to keep other entities informed as a Temporary Suspension Order may affect the agency's operation, and (2) to obtain assistance in placing clients, thereby reducing transfer and relocation trauma to clients as well as adverse effects on families of clients in care.

Each Regional Office should create and maintain a list of possible resources. Reference Material, Enforcement Actions, Sections 1-1260 and 1-1265 describe further how these agencies may be utilized and why coordination is important.

The following list should be used as a basis for creating an individual master list in each Regional Office:

- **County Department of Public Social Services or County Welfare Department Management:** This contact should be made by the Licensing Program Manager or Regional Manager, seeking a commitment of cooperation with Regional Office staff. This agency may be able to facilitate emergency placement services or provide staff to assist in the relocation process.

  County Medi-Cal Eligibility Unit: If a client does not already have Medi-Cal and needs medical care, this unit may be able to expedite the process.

- **Adult Protective Services:** The extent of Adult Protective Services involvement may vary by county depending on staff resources. However, Adult Protective Services should be contacted and included whenever possible to facilitate placement for those clients meeting Adult Protective Services criteria, who have no other case manager.

- **Public Guardian or Conservator's Office:** Upon becoming the court-appointed representative, the Public Guardian or Conservator's Office will place clients in community care facilities or Residential Care Facilities for the Elderly and may manage clients' funds. In the event of a pending facility closure, timely notice should be given to the Public Guardian or Conservator's Office so that they may identify appropriate placement for the court-appointed conservatee(s) for whom they have placement authority.

1-1245 AGENCY RESOURCE LIST (Continued) **1-1245**

- **Social Security Administration:** The Social Security Administration is a resource in the relocation process when a client is determined to be eligible for benefits, which may facilitate an appropriate placement and ease transfer and relocation. For example, a social worker from Adult Protective Services may determine that a client is eligible for SSI, and would contact the Social Security Administration to begin the process. Ideally, the Social Security Administration would designate an assigned staff person who would expedite the process. The Social Security Administration worker can process a change of address over the phone or provide the change of address form needed to ensure that the recipient's checks are mailed to the correct facility the following month. This also can be done online at http://www.ssa.gov/myaccount/.

- **County Mental Health Department, Continuing Care and Crisis Team:** The County Mental Health Department may have clients placed in the facility and would be involved. This agency may also be helpful assisting with clients who appear to have a psychiatric illness.

- **Regional Centers for the Developmentally Disabled:** These agencies often have clients in facilities, and they may be able to assist clients who have a dual diagnosis of developmental disability and psychiatric illness.

- **Long-Term Care Ombudsman:** The local Long-Term Care Ombudsman may know of current vacancies in suitable facilities able to meet the needs of clients. Ombudsman representatives are familiar with resources available to clients and families and can provide information about the facility closure to clients and families. The local Long-Term Care Ombudsman will follow up with clients after relocation to ensure clients are safely moved and content with their new homes.

- **Department of Public Health, Licensing and Certification Division:** This Division's licensed medical personnel may be consulted when the medical level of care is an issue at the facility. This agency must also be involved if the facility has a skilled nursing facility affiliated with it.

- **Department of Health Care Services, Long-Term Care Division:** For a list of Residential Care Facilities for the Elderly participating in the Assisted Living Waiver Program, visit their website at http://www.dhcs.ca.gov/services/ltc/Documents/ListofRCFEfacilities.pdf.

- **County Probation Office:** This agency may have clients in placement at the facility or know of vacancies where clients may be placed.

- **Child Protective Services or County Welfare Foster Placement:** These agencies may have clients placed in the facility or know of vacancies and be able to assist in relocation.

1-1245 AGENCY RESOURCE LIST (Continued) **1-1245**

- **Resource and Referral Agencies:** These agencies may know of vacancies and be able to assist parents in finding other suitable care.

- **Medical Consultant or Medical Personnel:** A medical consultant or medical personnel will provide on-site evaluations of clients and assist in the transfer of clients in order to prevent transfer and relocation trauma as specified in Health and Safety Code Sections 1556(c)(1) and 1569.525(a).

- **Law Enforcement:** Depending on the situation, there may be a need for support from local law enforcement.

- **Other Agencies**: Any other local agency that the Regional Office determines can assist in the serving of the Temporary Suspension Order or in the relocation of clients.

1-1255 OBTAINING A CLIENT CENSUS PRIOR TO A TEMPORARY SUSPENSION ORDER **1-1255**

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

If a Temporary Suspension Order is necessary, the Licensing Agency shall conduct an inspection of the facility to obtain a current client census. The Register of Facility Clients/Residents (LIC 9020) can be used to record the names of each client's placement agency or other authorized representative and their addresses and telephone numbers. If the Temporary Suspension Order will be served on a day care facility, the Child Care Facility Roster (LIC 9040) should be used to obtain the names, addresses and telephone numbers of the parents/guardians who have children in care at the facility.

If the facility is large it may be necessary to send more than one Licensing Program Analyst to assist in gathering the information. During this inspection, the Licensing Program Analyst(s) should also document any medical conditions of the residents, which could place the residents at risk for transfer trauma if moved from the facility.

If it appears that clients are in need of, but are not receiving, proper medical attention, the Licensing Agency shall contact and consult with physicians or other medical staff regarding the necessity of immediately removing clients from the facility. If the Temporary Suspension Order is served before removing the clients, the Licensing Agency shall use physicians or other medical consultants to provide an on-site evaluation.

If there is a considerable delay between obtaining the client census and the probable service date, it will be necessary to inspect the facility again prior to serving the Temporary Suspension Order to obtain an up-to-date client census.

1-1255 OBTAINING A CLIENT CENSUS PRIOR TO A TEMPORARY SUSPENSION ORDER (Continued) **1-1255**

In nearly all cases, a client census can be obtained during the inspection at which the Licensing Program Analyst determines the need for the Temporary Suspension Order (i.e., complaint, annual or case management inspection).

1-1260 COORDINATION WITH PLACEMENT AGENCIES 1-1260

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

In accordance with the statewide Memorandums of Understanding (Refer to Appendix E), Regional Offices are expected to meet regularly with local agencies in order to establish professional relationships and develop local Memorandums of Understanding when appropriate. To foster cooperation and communication, the Regional Office may meet regularly with other local agencies not covered by statewide Memorandums of Understanding, such as Adult Protective Services. The Regional Office may also enter into separate local Memorandums of Understanding with these agencies to delineate client relocation roles and responsibilities.

Prior to serving a Temporary Suspension Order, the Regional Office must initiate contact and determine the resources needed for relocation. The need to retain confidentiality of the impending Temporary Suspension Order is balanced with the need for as much advance notice as possible to agencies which will be seeking other placements for the clients. Refer to Reference Material, Enforcement Actions, Section 1-1245 for agency resources.

There are certain agencies the Regional Office must notify prior to the service of a Temporary Suspension Order. Those agencies include the following:

- Regarding Child Care facilities, Health and Safety Code Section 1596.853(d)(1)(C) mandates notification to the appropriate resource and referral as soon as possible and within two (2) business days after issuance of the Temporary Suspension Order against a facility within the resource and referral's jurisdiction.

- Regarding Child Care facilities that are funded by the State Department of Education, the Department is required to provide a copy of any Temporary Suspension Order immediately to the Child Development Division of the State Department of Education.

- Health and Safety Code Sections 1556 and 1569.525 require prior notification to any local agency that may have placement or advocacy responsibility for the clients of a community care facility or Residential Care Facility for the Elderly.

1-1260 COORDINATION WITH PLACEMENT AGENCIES (Continued) **1-1260**

- Federal law (Keys Amendment, section 1616(e) of the Social Security Act, 42 U.S.C. § 1382e) requires the Regional Office to inform the Social Security Administration of the impending service of the Temporary Suspension Order the name and address of the facility and the name of all Supplemental Security Income recipients residing in the facility. Refer to Reference Material, Enforcement Actions, Section 1-1700.

- The Memorandum of Understanding with the Office of the State Long-Term Care Ombudsman requires the Regional Office to notify the local Ombudsman Program prior to the issuance of a Temporary Suspension Order. Refer to Appendix E for further details on the Memorandum of Understanding.

Once it has been determined which agencies need to be notified of the impending Temporary Suspension Order, Regional Office staff should schedule a coordination meeting with the management staff from the designated agencies as identified by the Executive Director. A brief explanation of the facts supporting the Temporary Suspension Order should be provided. During the meeting, Regional Office staff should provide full disclosure to the agency managers, and stress the need for confidentiality of the Temporary Suspension Order and protected information. For the Adult and Senior Care Program, the Regional Manager shall notify the Executive Director of Adult Protective Services and Program Coordinator of the local Long-Term Care Ombudsman Program, or any other appropriate agency.

As soon as the Department has determined that a Temporary Suspension Order will be served, a coordination meeting will be held. Due to the speed of a telephonic Temporary Suspension Order, the Regional Office may need a conference call or to make individual calls.

Other issues to be discussed during the planning meeting with placement agencies include the following:

- Consider the time of day and day of week the Temporary Suspension Order can be served and what can realistically be accomplished during usual working hours, before the weekend or a holiday.

- It may be necessary to use a delayed effective date for a Temporary Suspension Order in the event the necessary beds are not available. See Reference Material, Enforcement Actions, Section 1-1190 for scheduling a Temporary Suspension Order.

- Depending on the clients' medical condition, discuss the need for the use of a nurse consultant to ensure the least level of transfer and relocation trauma to clients.

1-1260 COORDINATION WITH PLACEMENT AGENCIES (Continued) **1-1260**

- Considering the layout of the facility, determine where various actions will take place. For example, where could Adult Protective Services or the Public Guardian or Conservator conduct private interviews of clients? Where will clients wait for transportation to a new facility? In large facilities, it may be necessary to copy and distribute the facility sketch from the case file.

  If there is danger of desertion of the facility by the licensee, plans must be made for someone to stay with the residents who are not placed. Decide which agency will supply staff.

- If competency hearings are needed, no transfers may be made until after a competency determination and final hearing. The Public Guardian or Conservator will be familiar with the local procedures. A seventy-two (72) hour involuntary hold may be appropriate in some cases. (Welfare and Institutions Code Section 5150 provides the authority and requirements for use of an involuntary hold.)

- The Regional Office staff will immediately notify the Regional Manager and Program Administrator to address situations in which clients refuse to relocate and to discuss the need for sending an additional letter. (See Reference Material, Enforcement Actions, Section 1-1190 for sample letters.)

- If there are any clients anticipated to be challenging placements or any clients resistant to relocation, the Regional Office shall elevate these situations to the Department's Legal Division and the Program Office to discuss options available.

- If client funds are held by the facility or pro-rated refunds are not going to be available, financial planning will be necessary. Clients will need to be connected with the appropriate agencies assisting with this process. In some cases, it may be appropriate for the Department to use the emergency resident relocation fund to assist in this process. In addition, special circumstance allowances are available for Supplemental Security Income recipients and may be obtained through a county agency such as Adult Protective Services.

- Determine which agencies will have primary resident planning and relocation responsibilities before and at the time of service of the Temporary Suspension Order, and engage in the following:

  - Contact other licensed facilities. The purpose of these calls is to identify potential and available placements for clients (but not necessarily to identify a specific placement for each client) and to arrange for transportation to the new facilities. The licensee of the new facility will need to meet regulatory requirements in accepting a relocated client into the facility. These requirements include, but are not limited to, assessing clients to ensure the licensee can meet their needs and making sure each client has an appropriate physician's report. In cases where client records are either incomplete or non-existent, the Regional Office should exhaust all remedies to obtain these

1-1260 COORDINATION WITH PLACEMENT AGENCIES (Continued) **1-1260**

records or information that would be contained within these records. It may become necessary to use the emergency resident relocation fund to relocate a client.

- The Regional Office should provide copies of the list of appropriate facilities in the area to the clients, responsible parties, etc.

- Arrange transportation for clients to new placements. Regional Office staff should not provide actual transportation for clients, but should ensure transportation is coordinated. In some instances, it may be appropriate to use the emergency resident relocation fund to pay for the transportation of clients.

- In order to leave the facility landline telephones available for on-site use, contact clients' relatives from the Regional Office or from other agencies, to inform them of the Temporary Suspension Order prior to its effective date.

- Ensure clients are refunded from the facility all amounts due and owed to them. The Regional Office should ensure that clients and clients' responsible parties, if any, are provided available contact information for the appropriate agencies for assistance in enforcing refunds of clients' funds and assets.

- Ensure clients' medications, personal belongings and records accompany them to the new location.

- Provide clients and their responsible parties with change of address forms so they can request mail forwarding. Change of address may also be completed online through the U.S. Postal Service at https://www.mychangeaddress.com.

- The Social Security Administration may process a change of address over the telephone or provide the change of address forms for clients to continue to receive benefit checks. Change of address may also be completed online with Social Security by visiting their website at http://www.socialsecurity.gov/coa/.

1-1265 TEMPORARY SUSPENSION ORDER TEAM 1-1265

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

The Regional Office has the ultimate responsibility for service of the Temporary Suspension Order and the relocation process, although some tasks may be delegated to other agencies. To ensure that the process operates smoothly and efficiently, the Regional Office should develop a Temporary Suspension Orders team and schedule a planning meeting.

1-1265 TEMPORARY SUSPENSION ORDER TEAM (Continued) **1-1265**

The size of the team will be determined by the size of the facility and the number of clients. The team should consist of the following:

- The Regional Manager or county equivalent
- The Licensing Program Analyst assigned to the facility
- The Licensing Program Manager assigned to the facility
- Other experienced Licensing Program Analysts and support staff
- Investigators
- The Legal Division attorney assigned to the case

The team leader or coordinator will be the Regional Manager. If more than one team will be needed, make sure that everyone is clear on who is in charge of which team and which functions. In very large facilities, it may be useful to have color-coded name tags to identify teams. All Regional Office staff involved will not always be known to outside agency staff. For example, knowing that anyone with a red name tag is working on interviews and declarations may cut down on some of the confusion.

Utilizing the Agency Resource List in Reference Material, Enforcement Actions, Section 1-1245 and Reference Material, Enforcement Actions, Section 1-1235, the next step is to assign team roles or tasks. Tasks not assigned may be overlooked in what may be a very stressful situation. Some of the tasks may have been delegated to other agencies during your planning meeting with those agencies as outlined in Reference Material, Enforcement Actions, Section 1-1260.

Suggested team roles to be assigned as part of the Department's Facility Closure Plan development:

- **Temporary Suspension Order Server -** This duty shall be assigned to the Regional Manager. For county licensing offices, the Licensing Program Manager shall serve the Temporary Suspension Order. Follow procedures as outlined in Reference Material, Enforcement Actions, Sections 1-1190 and 1-1270.

- **Team Leader -** Sets up Temporary Suspension Order command post, reviews team assignments, assesses each team member's progress and assigns additional help if needed. Regional Manager (or county equivalent) serves as team leader.

- **Client and Family Contacts -** Depending on client population, inform residents of the Temporary Suspension Order in the best way to minimize trauma. This may be done in a group meeting or may require individual notification. A letter explaining why the Temporary Suspension Order is being served should be passed out to residents, relatives and responsible representatives. Assist with calming residents and family members.

- **Client Needs -** Ensure that residents' needs are met by licensee or designated agency or Regional Office staff until close of business, including meals and medications. Check rooms to determine if all personal items have been packed and provide assistance as needed.

1-1265 TEMPORARY SUSPENSION ORDER TEAM (Continued) **1-1265**

- **Client Relocations -** Assign someone to ensure that when children are removed from a child care facility that the persons taking the children away are the parents or person authorized in facility records to have custody of the child. In a Residential Care Facility for the Elderly, ensure that clients leave in the custody of an authorized placement agency or other responsible person. If the facility is large or has several exits, it may be necessary to station a person at each exit to ensure that placement agencies or relatives do not move clients without informing the Community Care Licensing Division that the clients are safe and in the custody of responsible persons. It is appropriate to ask for identification from unknown persons.

- **Communications -** Notifies the Regional Office, Statewide Program Office and the Legal Division after the Temporary Suspension Order has been served. If work is expected to extend after normal work hours, the team leader should have the attorney's and other appropriate staff's home telephone numbers.

- **Parent Contacts -** Contact parents as they arrive to pick up their children and provide them with a copy of the Accusation and accompanying letter.

- **Media Responsibility -** The Regional Manager provides a copy of the Temporary Suspension Order and Accusation to the Office of Public Affairs and Outreach Programs at the time the Temporary Suspension Order is approved. If the Regional Office is contacted by the media regarding the Temporary Suspension Order, the Regional Office should refer the media to the Office of Public Affairs and Outreach Programs; the Regional Manager should consult with the Statewide Program Office and the Office of Public Affairs and Outreach Programs on how best to handle it. Prepared statements, news releases and or copies of the Accusation and Suspension Order may be necessary. The Accusation is a public document once the Temporary Suspension Order is served.

- **Duplication of Records -** Copy needed documents for transfer (consent forms, emergency information, etc.) from each client's file. Prior to service, discuss with the attorney assigned to the case what should be done if the licensee refuses to allow access to the records.

- **Medication Packaging and Transfer -** Package each client's medication in individual bags and label each bag. Include Medi-Cal Cards and medication list.

- **Client Property and Cash Resources -** Determine balances and prepares receipts and money for transfer to a new facility.

- **Interviewer/Photographer -** After consultation with the Legal Division, obtain declarations (written statements under oath) coordinated with the Legal Division and take pictures of evidence gathered.

1-1265 TEMPORARY SUSPENSION ORDER TEAM (Continued) **1-1265**

- **Licensing Report -** Only one Facility Evaluation Report (LIC 809) need be written per inspection. The Licensing Program Analyst who prepares the report prior to leaving the facility should clearly understand what it should contain. Some of the key areas to be documented are as follows:

  a. Facts confirming personal service of Temporary Suspension Order. (Identify name and title of person served, and recipient and on whose behalf they accepted service if not their own, exact time served, and any client notification.)

  b. Client census, other persons present (include Temporary Suspension Order Team and agency personnel).

  c. Any problems or unusual incidents.

  d. Any information regarding the needs of clients during the relocation process (including meals and medications).

  e. Status of refunds to clients.

  f. Time of departure and client census.

  g. In the event licensing staff provide ongoing oversight at the facility, the Regional Office should obtain direction from the Program Office with consultation with the Legal Division and the Deputy on reports to prepare documenting the Department's presence at the facility and types of enforcement actions appropriate while oversight is being provided.

1-1270 TEMPORARY SUSPENSION ORDER SERVICE PROCEDURES 1-1270

In addition to the following procedures, refer to Reference Material, Enforcement Actions, Section 1-1190.

The Legal Division will notify the Licensing Office as soon as the Temporary Suspension Order and Accusation have been signed. Prior to serving the Temporary Suspension Order, the Regional Office should ensure that appropriate notifications to outside agencies have been made as specified in Reference Material, Enforcement Actions, Sections 1-1190 and 1-1260. The Regional Office should also determine if there is a need for local law enforcement support and arrange for this support if appropriate.

The local Licensing Office shall then:

1. Receive the Temporary Suspension Order package from the Legal Division. The Temporary Suspension Order package will contain the following documents:

1-1270 TEMPORARY SUSPENSION ORDER SERVICE PROCEDURES 1-1270
(Continued)

a. Temporary Suspension Order

b. Accusation

c. Confidential Name List (if any)

d. Notice of Defense (2) copies

e. Statement to Respondent

f. Relevant Government Code Statutes

g. Request for Discovery

h. Additional instructions and documents concerning Interim Hearing Rights if the facility is a community care facility (excluding Residential Care Facilities for the Elderly, Residential Care Facilities for the Chronically Ill, Child Care Centers and Family Child Care Homes)

i. Proof of Personal Service

2. The Regional Manager (or designee) or equivalent county staff shall serve the Temporary Suspension Order in person to the licensee or person designated to accept licensing reports (per Designation of Facility Responsibility (LIC 308)) in the facility file.

   a. Give the person served items "a" through "g" above, or for community care facility items "a" through "h", depending on the type of facility.

   b. Inform the person served of the effective date of the Temporary Suspension Order.

   c. Upon return to the Regional Office, complete and sign the Proof of Personal Service (item "i" above), make a copy for the facility file and forward original to the Legal Division.

3. If it is not possible to serve the licensee and there is no other authorized representative to accept service, call the Legal Division for further instructions on service.

4. Direct questions posed by the respondent following service to the assigned attorney.

5. Document refusals to honor the Temporary Suspension Order and forward this documentation to the assigned attorney to determine the best course of action based on case-by-case analysis.

1-1270 TEMPORARY SUSPENSION ORDER SERVICE PROCEDURES 1-1270
(Continued)

6. For Child Care Centers or Family Child Care Homes, post the Temporary Suspension Order Notice (LIC 9031) on the main entrance used by parents dropping off or picking up children in a Child Care Center or Family Child Care Home.

Upon serving the Temporary Suspension Order, the Licensing Program Analyst shall review the Identification and Emergency Information (LIC 601) for residential facilities and Adult Day Programs, the Identification and Emergency Information Child Care Centers/Family Child Care Homes (LIC 700) for Child Care Centers and Family Child Care Homes, or other appropriate records in the facility's client records to obtain the name of each client and authorized representative, parent or guardian. The purpose of this review is to ensure that the facility roster is accurate and current, in order to determine whether changes exist in the client population.

If there are authorized representatives other than the agencies already notified (refer to Reference Material, Enforcement Actions, Sections 1-1190 and 1-1260) who have not been notified, immediately telephone the Licensing Program Manager at the Regional Office or assigned staff and relay those names.

For Child Care Centers and Family Child Care Homes, provide a list of parents'/guardians' names to the Licensing Program Manager or assigned staff so that they may contact those persons as appropriate.

Determine whether the licensee is the representative payee for any clients' Social Security or Supplemental Security Income and State Supplementary Program payments. If the licensee is the representative payee, immediately telephone the local Social Security office and notify them that the designated representative payee is no longer a licensed community care facility operator.

The Regional Manager (or designee) or county equivalent shall:

1. Ensure that all authorized representatives are notified at least twenty-four (24) hours prior to the effective date of the Temporary Suspension Order. (For Child Care Centers and Family Child Care Homes, include parent(s) or guardian(s) of children in care.)

   If the facility is large, designate a team of Licensing Program Analysts to ensure notification of all agencies and authorized representatives at least twenty-four (24) hours prior to the effective date of the Temporary Suspension Order. As noted in Reference Material, Enforcement Actions, Section 1-1190, contacts with known placement agencies and other responsible agencies should have occurred during the Department's facility closure planning process.

2. Follow up all verbal notifications with written notification via certified return receipt U.S. mail, within twenty-four (24) hours of Temporary Suspension Order service (see sample letters in Reference Material, Enforcement Actions, Section 1-1190).

1-1270 TEMPORARY SUSPENSION ORDER SERVICE PROCEDURES 1-1270
(Continued)

3. For the Children's Residential Program or the Child Care Program, contact the local legislators' offices by telephone. Forward a copy of the Temporary Suspension Order and Accusation within twenty-four (24) hours of the day of service to the local legislators' offices. Contacts may also be made with other local elected officials as provided in Reference Material, Enforcement Actions, Section 1-1190. For the Adult and Senior Care Program, notify the Program Office immediately upon service of the Temporary Suspension Order.

4. Follow up to ensure that facilities are closed and that no clients remain in the licensee's care. Verification must occur within thirty (30) days of the Temporary Suspension Order, or as required by the Department's Facility Closure Plan. Most often, verification will require a follow-up inspection. An appropriate placement agency may verify that clients no longer remain and no clients are being placed in the facility. Verification not made by an actual inspection must be approved by the Licensing Program Manager. Whatever verification action is taken, documentation of the action must be included in the facility file. Upon determination that the facility is operating in violation of the law, immediately take steps to ensure facility closure.

1-1290 LEGAL DIVISION PROCEDURES FOR TEMPORARY SUSPENSION ORDERS AND UNLICENSED OPERATIONS 1-1290

The Community Care Licensing Division and the Legal Division are separate parts of the team which handles Administrative Actions that can result in the relocation of clients from licensed or unlicensed care facilities. What follows are the steps carried out by the Legal Division in cooperation with the Licensing Division in such actions.

1. **TEMPORARY SUSPENSION ORDERS**

The Legal Division Attorney who is assigned a Temporary Suspension Order shall prepare the Accusation, Suspension Order, and all necessary documents consistent with our standard practices. However, the effective date of the Temporary Suspension Order may not be known until the Deputy Director has reviewed the Accusation, so the pleading may be routed for approval and review before the effective date is known. Legal Assistants and support staff will assist in the preparation of those materials as necessary under the direction of the attorney. The attorney shall consult with the Licensing Office and Statewide Program Office as necessary. The attorney shall contact the appropriate Deputy Attorney General to obtain approval and if approved, prepare a circulating memorandum and route the whole package for approval to the Community Care Licensing Division Deputy Director.

While this process is occurring, the Licensing Office shall prepare a memorandum known as a closure report to the Assistant Program Administrator or Program Administrator or delegate for his/her review and approval.

1-1290 LEGAL DIVISION PROCEDURES FOR TEMPORARY SUSPENSION ORDERS AND UNLICENSED OPERATIONS **1-1290**
(Continued)

The Assistant Program Administrator or Program Administrator or delegate will forward the closure report to the Deputy Director of the Department for his/her review and for the Deputy Director's notification to the Director and Agency.

During this time, the assigned attorney shall remain available for any questions that may arise throughout the process.

If there is an imminent danger situation, the Department may exercise its discretion to act immediately for the protection of clients. The Legal Division and/or Licensing Office or Statewide Program Office may make that recommendation, but the Director or individual that is designated by the Director, shall have the sole discretion to make the decision.

If the Accusation and Temporary Suspension Order are assigned by the Community Care Licensing Division Deputy Director, then it shall be faxed to the Licensing Office at once.

2. **PROPOSED DECISIONS REQUIRING CLOSURE**

This procedure applies where a facility will be closed if the Deputy Director adopts a proposed Decision and Order revoking a license or denying the application of an operating facility. This procedure does not apply where the license has already been suspended and there are no clients in care and nor does this procedure apply to exclusion actions.

A proposed decision received from the Office of Administrative Hearings that will result in the closure of the facility shall be handled in the following manner:

a. **Receipt of Proposed Decision Revoking Suspended License:**
The attorney should ensure that the Regional Office is notified by telephone when the proposed decision is received, regardless of the recommendation decision.

If a proposed decision revokes the license, the Order adopting the decision shall be effective immediately. The proposed Decision and Order shall be served on the respondent and the Regional Office by mail.

If a proposed decision does not revoke the suspended license, the procedures for reviewing and recommending adoption or alternation shall be followed.

b. **Notification to Regional Office:**
The case attorney shall be primarily responsible for immediately notifying the Regional Manager of the proposed decision. If the case attorney is not available, the secretary assigned to that attorney shall notify the Regional Manager immediately.

1-1290 LEGAL DIVISION PROCEDURES FOR TEMPORARY SUSPENSION ORDERS AND UNLICENSED OPERATIONS **1-1290**
(Continued)

In order to ensure that the greatest possible time is given to the Regional Offices, the contact shall be by telephone. If the Regional Manager is not present, the notifying party shall contact the individual who is acting in the Regional Manager's place and complete the notification.

If a voice-mail recorder is reached, the notifying party shall not leave a voice-mail message. Instead, he or she shall contact the receptionist and request that the Regional Manager or other designated individual return the call as soon as possible to ensure that notification is completed and to guard against missed or garbled messages.

Once the Regional Office is informed of the proposed decision, it will determine if the facility is still operating and obtain a current roster of clients. If placement agencies or referral agencies are contacted, they should be notified that a proposed decision has been issued by an Administrative Law Judge and that the Department has not adopted that decision. The agencies should be notified that the Department may adopt the decision, which would necessitate client relocation.

c. **Order Revoking License:**
If the Deputy Director adopts a decision which results in the closure of a facility, the support staff will type in the effective date of the decision on the Order consistent with the memorandum. In most cases, the Order will be effective ten days from the date of service of the Decision and Order to the Respondent. That ten-day delayed effective date is to assist in the orderly notification and transfer of clients.

Stay of Execution of Order Revoking License:
If the Department wishes to provide a longer period of time, the Deputy Director of the Department may stay the date of execution, following the adoption of the decision, by use of the Administrative Procedures Act Section §11519(b). Under this provision, the Department may stay the execution of the Order, which will have already been executed and served. The communication to the Deputy Director recommending a stay shall be in writing, explaining why the effective date of the Decision and Order should be stayed in order to permit the licensee to operate for a longer period of time. The memorandum must be provided to respondent or respondent's attorney, if represented, along with a copy of the proposed decision.

1-1290 LEGAL DIVISION PROCEDURES FOR TEMPORARY SUSPENSION ORDERS AND UNLICENSED OPERATIONS **1-1290**
(Continued)

Shortened Effective Date: If the Department wishes to shorten the time period for the protection of clients, the Community Care Licensing Division and attorney shall confer and make a recommendation as to the effective date of the Order to the Community Care Licensing Division Deputy Director before the Decision and Order is executed. If the Community Care Licensing Division Deputy Director agrees to the date, the attorney shall make written notification to the Respondent's representative and send the same notice to the Deputy Director who is responsible for adopting the decision. The Regional Office may initiate this request to the Legal Division, but any change in the time period must be approved by the Deputy Director.

This procedure is necessary to prevent any type of ex-parte communication as required by the Administrative Procedures Act.

3. **PROPOSED DECISION WITH STAYED REVOCATION/PROBATION**

Upon receipt of a proposed decision that does not require closure of a facility, the assigned case attorney, or in his/her absence, the support staff assigned to that attorney shall contact the Regional Office as soon as possible and notify the Regional Manager or individual acting on his/her behalf.

The case attorney and Regional Manager shall discuss any issues with the case, including possible alteration of the decision. If the Department determines that the decision is appropriate for adoption, the decision will be submitted for adoption and no notification regarding relocation would be necessary. In this case, the Order adopting the decision resulting in probation shall be effective ten days after service.

If the proposed action is submitted for alternating, no notification to outside agencies shall occur until the proposed decision is adopted or alternated. In an alternate decision results in revocation, the procedures for a decision resulting in closure, above, shall be followed.

4. **STIPULATIONS**

The effective date of Stipulations shall be agreed upon by the parties, providing for the safety, notification and ease of relocation of clients. There shall be no effective date on Stipulations immediately above the Deputy Director's signature block, but the effective date shall be addressed in the body of the agreement. The attorney shall confer with the Community Care Licensing Division to ensure that a settlement which results in clients being relocated (or in the case of day care, results in families locating alternative care) is consistent with the Department and Agency's policies with regard to closing facilities.

1-1290 LEGAL DIVISION PROCEDURES FOR TEMPORARY SUSPENSION ORDERS AND UNLICENSED OPERATIONS **1-1290**
(Continued)

Upon the signing of the Stipulation by the Respondent, the attorney shall notify the Regional Office. The Regional Office may contact other agencies and inform them that a proposed Stipulation has been signed and is pending adoption. The attorney will then sign the Stipulation and route it for review and approval by the Assistant Chief Counsel, the Community Care Licensing Division Deputy Director and the Legal Division Deputy Director in the usual course of business.

Upon adoption of the Stipulation that results in probation, the Department shall re-issue a probationary license to the facility. The licensee will then be required to post the probationary license, which will indicate that the license is subject to terms and conditions of probation.

If an application is submitted, and subsequently denied, and the facility continues to operate, a second Notice of Violation shall be issued and civil penalties assessed. The District or Statewide Program Office shall then contact an Assistant Chief Counsel as soon as the second Notice of Violation is issued. The option of criminal referral, injunctive relief, or any other appropriate remedies will be discussed.

If a decision is made to pursue injunctive relief, an attorney will be assigned the case to prepare declarations and cover memorandum to the Attorney General's Office. In many cases, an attorney will be assigned before a Statement of Facts is received by the Legal Division. Once the material is submitted to the Attorney General's Office, the case attorney may have to prepare additional documents at the request of the Attorney General's Office and assist in the preparation and any presentation in court.

During the process, the Regional Office or Investigator will be attempting to obtain information as to names of clients and their relatives. Once that is done, the Regional Office will send notification to clients and when appropriate relatives, informing them of the unlicensed operation and what potential remedies may be pursued. This notice will include the potential of clients/residents having to be relocated.

In any event, the decision to assist any other agency in the removal and placement of clients shall be with the Director.

If no injunction is issued or if one has been issued but the case has been closed, a memo will be prepared and routed to the Attorney's Supervisor, the Assistant Chief Counsel, and the Deputy Director of the Community Care Licensing Division.

1-1300 EXPEDITED ACCUSATION 1-1300

An expedited Accusation can be requested when a serious situation exists at a facility that does not constitute an immediate health or safety risk as defined in Reference Material, Enforcement Actions, Section 1-1205 or Section 1-1415, but requires quick action by the Department. The case summary in the Statement of Facts must clearly explain why an expedited revocation is requested, and that the case was discussed with the consulting attorney assigned to the Regional Office.

When an expedited Accusation is requested, the Deputy General Counsel or designee will rely on the case summary to assess, prioritize and assign the case. The assigned attorney will also review and evaluate the case and determine whether, under current Legal Division priorities, an expedited Accusation is appropriate.

If an expedited Accusation is appropriate, the legal office acts quickly to have the case assigned and the pleading drafted and served. The hearing will be scheduled within 90 days of the receipt of the notice of defense. The facility remains open and in operation throughout the process, unlike a Temporary Suspension Order where the hearing is scheduled within 30 days of the notice of defense and the facility is closed immediately pending the hearing. Likewise, if the expedited Accusation concerns action to exclude an employee or non-client resident from licensed facilities, the employee or non-client resident may remain in the facility through the process unless the Department issues an Immediate Exclusion Order.

The determination of whether to recommend an expedited Accusation rather than a Temporary Suspension Order or Immediate Employee or non-client Resident Exclusion Order is made on a case-by-case basis. Consider the following factors:

1. Were the clients in immediate risk, but now may not be due to safety measures taken by the licensee? Is the ability of the licensee to maintain these measures unknown or questionable?
2. Does the licensee have a non-compliance history? Has the licensee indicated an unwillingness or inability to comply? Is it likely that this will create a risk to clients in care?
3. If an employee or resident is excluded prior to hearing, is it possible that the excluded family member or employee may return to the facility? Is it likely that this excluded person will create a risk to clients in care?
4. Is there a history or likelihood that new clients will be placed in the facility (even though no clients are currently in care)? Is it likely that this situation will create a risk to the new clients?
5. Will the alleged perpetrator, who is currently in custody, be released soon?
6. Can a workable plan be developed to allow the facility to remain open pending the hearing?
7. Would further investigation produce additional evidence for a Temporary Suspension Order?

1-1300 EXPEDITED ACCUSATION (Continued) 1-1300

If the decision is made to request an expedited Accusation, then the Licensing Program Analyst/County Worker should:

1. Monitor the facility closely.
2. Continue to assess for legal action, including possible upgrade to a Temporary Suspension Order.
3. Continue to provide any new documents and other information to the assigned attorney IMMEDIATELY. See Reference Material, Enforcement Actions, Sections 1-1100 and 1-1150.

1-1400 NON-LICENSEE ADMINISTRATIVE ACTIONS 1-1400

Most Administrative Actions are either actions to revoke an existing facility license or actions to deny an application for an initial facility license.

Actions are also taken to revoke a certificate of approval to operate a Certified Family Home, to deny or revoke an administrator certificate or an approved vendor, to deny or revoke TrustLine registration, or to exclude an individual from any facility licensed by the Department. The individuals may be employees or prospective employees of a facility or persons other than clients living or otherwise present in a licensed facility.

Administrative Actions taken against these individuals are called exclusion actions. Actions against employees and prospective employees are called "Employee Exclusions."

All persons whom the Department seeks to have excluded from a licensed facility have the right to notice of the exclusion action and to an Administrative Hearing before the Exclusion Order is effective, except where exclusion is ordered prior to hearing (refer to Reference Material, Enforcement Actions, Section 1-1415). The right to notice and a hearing stems from constitutional principles of due process that apply to government actions against an individual, and is specifically required by statute for employees, prospective employees, or persons excluded because of their crimes.

The hearing that the Department provides is conducted according to the rules in the Administrative Procedures Act. The Legal Division will prepare the case for hearing and represent the Department at the hearing before an Administrative Law Judge from the Office of Administrative Hearings. This is the same procedure provided for licensees when the Department wishes to revoke a license or deny an initial application.

The following sections of Reference Material, Enforcement Actions, discuss the different types of non-licensee Administrative Actions: Employee Actions (Section 1-1410); Immediate Exclusion Employee Actions (Section 1-1415); Exclusions "For the Record" (Section 1-1417); Certified Family Home Actions (Section 1-1430); and Actions Concerning other Persons in Facility (Section 1-1450).

The following sections of Reference Material, Enforcement Actions, are also very important in putting together Administrative Actions in these types of cases: Section 1-1020 regarding Evidence and Documentation; and Sections 1-1100, 1-1130 and 1-1150 regarding the preparation of the Statement of Facts package and roles and responsibilities after the Statement of Facts is received by the Legal Division.

1-1400 NON-LICENSEE ADMINISTRATIVE ACTIONS (Continued) 1-1400

Further details regarding any of the actions described in these sections should be discussed with the Licensing Office's assigned Legal Consultant. A list of the attorney consultants for each office is on the Department of Social Services internal webpage for the Legal Division.

1-1410 EMPLOYEE ACTIONS 1-1410

At times a problem with a facility is actually a problem with a particular employee or employees or persons having client contact. In such cases, the Department may prohibit a licensee from: employing an individual, continuing the individual's employment, allowing the individual in the facility, or allowing the individual contact with clients in the facility. The Licensing Agency can take these actions against an employee or prospective employee or other persons based upon any of the grounds, which would be the basis to revoke a facility's license. These actions also are initiated and resolved in the same way that the Department takes action against a licensee – by filing an Accusation and conducting an Administrative Hearing for those who appeal.

Employee actions by the Licensing Agency are controlled by statute: Health and Safety Code Sections 1558 for community care facilities; 1568.066 for Residential Care Facilities for the Chronically Ill; 1569.58 for Residential Care Facilities for the Elderly; and 1596.8897 for Child Care Centers. These statutes specify the employee's right to notice and an opportunity for a hearing from the Licensing Agency.

A facility has a right to notice and an opportunity for a hearing before the Department orders the person excluded from the facility or barred from client contact, unless the Department serves an immediate Exclusion Order against the person before it files an Accusation against the person (see Reference Material, Enforcement Actions, Section 1-1415). Specifically, notice must be served on the employee and licensee either personally or by certified mail.

The determination of whether to exclude a person from licensed facilities prior to a hearing is made on a case-by-case basis. Generally, the person should be excluded from the facility prior to hearing by issuance of a pre-hearing Exclusion Order (see Reference Material, Enforcement Actions, Section 1-1420 for examples). Instances where pre-hearing Exclusion Orders may not be necessary are:

1. The facility where the employee worked most recently already has fired the employee, and it appears that the employee is unlikely to be hired at another facility in the near future (having left the State for example). The purpose for referring the case to the Legal Division is to create an administrative record that would be used to preclude the employee from seeking other employment in other licensed facilities (see Reference Material, Enforcement Actions, Section 1-1417).

2. The employee is in jail and will not be released soon.

3. The employee or person is the spouse of the licensee and resides in the licensed facility. In these instances, a Temporary Suspension Order recommendation may be warranted, and the Regional Office would refer the case to the Legal Division

1-1410 EMPLOYEE ACTIONS (Continued) **1-1410**

for a combined action against the licensee and the person. The Accusation would seek the exclusion of the person from all licensed facilities as well as the revocation to the spouse's license.

4. The misconduct by the person is relatively minor or did not occur at a licensed facility. Often, this kind of case involves "arrest information" or Child Abuse Index information that is unknown to the licensee. Due to confidentiality restrictions, the Department cannot informally tell the licensee about this information.

Examples of these kinds of "arrest information" situations might include:

a. A Residential Care Facility for the Elderly administrator, whose work performance at the facility appears to be problem free, has a history of repeated, mutual spousal abuse with his/her spouse, outside of the facility.

b. A Child Care Center maintenance worker, whose work performance at the facility appears to be problem free, has a history of excessive drinking after work.

c. A Group Home care provider, whose work performance at the facility appears to be problem free, has a history of shoplifting and minor drug-related arrests as a juvenile.

In these instances the Licensing Office may believe that the person would not pose a risk of harm to clients if certain restrictions were placed on the employee or the licensee, but that the licensee is unaware of the need for these restrictions because of the information regarding the employee's misconduct is confidential. The Licensing Office may wish to refer this matter for a non-immediate exclusion action. The individual would be notified in the Accusation and would be allowed to remain in the facility throughout the process. The Accusation would make this confidential information public, and the Department then should enter into a settlement with the employee to limit the duties of the employee, to require the employee to obtain training or education, or to require close supervision of the employee by another facility staff. The exclusion of the employee prior to the filing of the Accusation and settlement of the case may be counterproductive to effective settlement because the employee may not be able to return to his/her former position at the facility, having been replaced by the licensee during the pendency of filing of the Accusation and the settlement negotiations.

When investigating whether an exclusion action or order should be taken against a person, licensing staff must ensure that confidential information is not provided to the licensee which may be used as the basis for the licensee excluding a person from employment or presence in the facility. If the exclusion action is based on a criminal record conviction, the person under investigation may, however, be shown his or her own rap sheet in the local Licensing Office in order to address the convictions if seeking an exemption or to contact the appropriate authorities regarding his or her criminal record.

1-1410 EMPLOYEE ACTIONS (Continued) **1-1410**

When a person contacts a State Regional Office requesting to see his/her rap sheet, the Licensing Program Analyst must get his/her full name, birth date, social security number and other identifying information so that the Caregiver Background Check Bureau can send the correct rap sheet to the Regional Office. The person must show photo identification immediately before viewing the rap sheet to prove he or she is the person on the rap sheet.

The Caregiver Background Check Bureau makes employee criminal record exemption denials but the Regional Office may also deny an application or revoke a license because of such denials. The right to appeal a denial or revocation of a license is separate from the right to appeal a denial of a criminal record exemption.

Unless the Licensing Agency specifies otherwise, the individual who is the subject of an exclusion action may remain employed by or be present in the facility until the appeal process is completed. See Reference Material, Enforcement Actions, Section 1-1415 for details.

1-1415 IMMEDIATE EXCLUSION ORDERS PRIOR TO HEARING 1-1415

The statutes concerning employee actions allow the Licensing Agency to require the immediate exclusion of an employee, prospective employee or any person who is not a client from a facility prior to serving an Accusation or completing an Administrative Hearing. This immediate Exclusion Order remains in effect pending the outcome of any appeal requested by the individual. An immediate Exclusion Order prior to hearing is a temporary order. If the person does not appeal the immediate Exclusion Order, the order becomes permanent. If the immediate Exclusion Order is appealed, it lasts only until a decision is adopted following a hearing on the Accusation.

The California Department of Social Services or the Licensing Agency may order an immediate exclusion of an employee or person who is not a client if the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety, on the same grounds that warrant the issuance of a Temporary Suspension Order against a license before a hearing.

In addition, statutes concerning criminal records (Health and Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871) specify that if a person has certain specified criminal convictions, the Licensing Agency must notify the licensee to act immediately to terminate the individual's employment, remove the person from the facility, or bar the person from entering the facility. When the Licensing Agency gives this notification concerning any person to a facility, it is legally the same as any other order of immediate exclusion against the person. The expedited hearing requirements of the exclusion sections are not triggered when the Caregiver Background Check Bureau orders a person out of the facility during the criminal record exemption process.

1-1415 IMMEDIATE EXCLUSION ORDERS PRIOR TO HEARING 1-1415
(Continued)

It is only after the Caregiver Background Check Bureau denies the person a criminal record exemption that the expedited hearing requirements apply.

Generally, an order for removal of a person from a facility prior to any hearing should be made only if the act committed by the person would be cause for a Temporary Suspension Order if the person were not removed from the facility. Immediate Exclusion Orders have a serious impact on the person's career, income, and family. Any order for immediate removal of a person prior to any hearing must be reviewed and approved by the Legal Division.

If you are reading this section because you have a facility employee problem or a problem with a person who has client contact and are wondering whether an Immediate Exclusion Order prior to hearing is appropriate, discuss the case with your Licensing Program Manager and the Licensing Office's assigned Legal Consultant. Factors to be considered in assessing whether an immediate substantial health and safety risk exists include those factors to be considered when the necessity of a Temporary Suspension Order is being examined. (See Reference Material, Enforcement Actions, Section 1-1205 to review the criteria for establishing cause for a Temporary Suspension Order.) If the person to be excluded is the administrator of an Adult Residential Facility, Group Homes, or Residential Care Facilities for the Elderly, contact the Manager of the Administrator Certification Section to advise of the action and discuss any other actions that should be included in the Statement of Facts, such as revocation of the administrator certificate or revocation of an approved vendor. The Administrator Certification Section will provide all information/evidence necessary to the Regional Office for inclusion in the Statement of Facts.

While an Exclusion Order ameliorated the situation, it does not necessarily remove the need to initiate a license revocation.

If the Licensing Agency requires the immediate exclusion of an employee or prospective employee or person who is not a client from a facility prior to any hearing, the agency must serve an order of immediate exclusion upon the individual, notifying the individual of the basis of the agency's action and of the individual's right to appeal the order. This order must be served on the individual personally or by certified mail. A written notice of the order also must be served on the facility and the licensee personally or by certified mail.

If the individual makes a timely appeal of the order, he/she will be served an Accusation within 30 days of his/her appeal time schedule, as required by statute. To be timely, the employee's appeal of the order must be submitted within 15 days of the date that the notice was served on the employee.

Depending on the nature of the immediate exclusion, the Exclusion Order will be sent by either the Licensing Office or the Caregiver Background Check Bureau. If the exclusion is based on a specified criminal conviction, the exclusion process will be handled by the Caregiver Background Check Bureau.

1-1415 IMMEDIATE EXCLUSION ORDERS PRIOR TO HEARING 1-1415
(Continued)

In all other cases (including investigations by the Licensing Office of complaints, arrests, child abuse index check, Child Protective Services information, or adult or elderly abuse reports resulting in the need to exclude an employee or prospective employee or person who is not a client from a facility prior to any hearing), the Licensing Office is responsible, in consultation with the Legal Division, for investigating and resolving the issue(s) and notifying the appropriate parties of the results, requirements and appeal rights.

The following procedures discussed in this section are specifically for the Licensing Offices. Any case-specific questions regarding immediate exclusions handled by the Caregiver Background Check Bureau should be directed to the Caregiver Background Check Bureau. (See Reference Material, Enforcement Actions, Section 1-1010.)

During the investigation, the Licensing Program Analyst must not request, recommend or suggest that the licensee remove the employee or person from contact with clients, even by telling the licensee to put the employee or person on desk duty. If, after a completed investigation, an immediate pre-hearing Exclusion Order is warranted and approved, the Licensing Office is to verbally inform the licensee of the exclusion decision and then send the licensee, by certified mail, an order of immediate exclusion prior to any hearing. The Licensing Program Analyst should not ask or tell the licensee to fire the employee. The Licensing Office must also send the excluded individual, by certified mail, an order of immediate exclusion prior to hearing. Sample Exclusion Orders for both the licensee and the excluded individuals can be found in Reference Material, Enforcement Actions, Section 1-1420.

The Licensing Office is responsible for monitoring the licensee to ensure that the licensee complies with the Exclusion Order. The Licensing Program Analyst shall conduct an unannounced inspection to a facility within 30 days after the California Department of Social Services serves an order of immediate exclusion from the facility upon the licensee, or a person subject to immediate removal or exclusion from the facility, in order to ensure that the excluded person is not within the facility, unless the Licensing Program Analyst has previously verified that the excluded person is not within the facility. Verification by means other than an actual inspection that the excluded person is not within the facility must be approved by the Licensing Program Manager. Whatever verification action is taken, documentation of the action must be placed in the facility file.

Statute requires that parents be notified when someone has been excluded from a Family Child Care Home. The Licensing Program Analyst must verify at the above 30-day inspection that the licensee has notified the parents that an individual has been excluded. In addition, the Licensing Program Analyst must verify that original parent signatures are on the Family Child Care Home Addendum to Notification of Parents' Rights (Regarding Removal/Exclusion (LIC 995B).

An excluded person has 15 calendar days to appeal the Exclusion Order. Should an excluded person appeal the Exclusion Order, the appeal will be mailed directly to the Statewide Program Office. Make sure when completing the Exclusion Orders that the appropriate Statewide Program Office address is included for appeal purposes.

1-1415 IMMEDIATE EXCLUSION ORDERS PRIOR TO HEARING 1-1415
(Continued)

Upon receipt of the appeal, the Statewide Program Office will call the Licensing Office and FAX to them a copy of the appeal with a request for a Statement of Facts. County licensing offices will send by FAX the Statement of Facts package to the Statewide Program Office and the Statewide Program Office will send the approved package by FAX or overnight mail to the Legal Division, all within five working days of the receipt of the appeal. State Regional Offices will e-mail the Statement of Facts for approval to the Assistant Program Administrator or Program Office designee. When approval is received, the Regional Manager signs the Statement of Facts for himself or herself and the Assistant Program Administrator or Program Office designee. The Regional Office sends a copy of the signed Statement of Facts Summary Sheet (LIC 9029A) along with all supporting documents by FAX or overnight mail to the Legal Division all within five working days of the receipt of the appeal. The Statewide Program Office will also send an "Acknowledgment" letter to the appellant. A sample Acknowledgment Letter can be found in Reference Material, Enforcement Actions, Section 1-1425.

The Legal Division will prepare and arrange service of the Accusation, which must be served within 30 days from receipt of the appeal. Within 60 days of receipt of a notice of defense, the California Department of Social Services shall conduct a hearing on the Accusation. When the hearing is held, the standard of proof shall be the preponderance of evidence and the burden of proof shall be on the California Department of Social Services. The California Department of Social Services shall issue a final decision within 60 days of the hearing. If a final decision is not made within 60 days, the pre-hearing Exclusion Order expires and the excluded person may have contact with clients, pending a final decision excluding the person. The final decision of the California Department of Social Services, however, still may order the person's exclusion from licensed facilities.

If the California Department of Social Services final order does exclude the person from licensed facilities, that order remains in effect until the person petitions the California Department of Social Services for modification of the order (which is permitted any time after one year has passed) and that petition is granted by the California Department of Social Services. Remember that a pre-hearing Exclusion Order that is not appealed by an employee constitutes a "final order" to the same extent as an order that is issued after an appeal and a hearing.

If the excluded person subsequently seeks or obtains employment at another licensed facility, another Exclusion Notice should be served immediately on the excluded person, the facility, and the licensee. This notice, however, should refer to the California Department of Social Services existing Exclusion Order and need not contain any references to appeal rights. Contact the attorney consultant or Assistant Chief Counsel assigned to the office for specific information regarding the content of this kind of Exclusion Notice.

1-1417 EXCLUSIONS "FOR THE RECORD" 1-1417

Unless instructed otherwise by the Regional Manager, the Department should file formal allegations against the employee or other person who is not a client, and if necessary, conduct a hearing for the purpose of creating a record of the person's misconduct. If the person is no longer employed, present, or residing at the facility, and a pre-hearing Exclusion Order appears to be unnecessary or the pre-hearing Exclusion Order was served but not appealed by the excluded person, the case should always be referred for filing of an Accusation seeking the person's exclusion "for the record." Cases where this would be appropriate are similar to cases where revocation of a license "for the record" are appropriate – namely, serious violations of the licensing statutes or regulations or other serious misconduct. Examples might include:

a. An employee is arrested for client abuse and is awaiting trial in jail.

b. An employee was fired for abusing a client and has left the State.

c. The facility now is closed but the employee was responsible for many of the violations.

d. The person was served with a pre-hearing Exclusion Order but did not file an appeal. In these instances, no information about the exclusion will be recorded on the person's rap sheet unless the Department also files an Accusation against the person and obtains a formal Exclusion Order issued by the Department. Pre-hearing Exclusion Orders are not the kind of "due process" required by the Department of Justice before information about action by the Department against the person can be placed on the person's rap sheet.

When a case is referred for exclusion "for the record," the Regional Office prepares the Statement of Facts and supporting information in the same manner as a referral for revocation "for the record." Because an immediate Exclusion Order either was not served on the person or, if served, was not appealed, the expedited time frames for serving an Accusation and conducting the hearing do not apply. The Legal Division will give the case the same priority as it does to revocation "for the record."

If the person to be excluded is the administrator of an Adult Residential Facility, Group Home, or Residential Care Facility for the Elderly, contact the Manager of the Administrator Certification Section to discuss any other actions that should be included in the Statement of Facts such as revocation of the administrator certificate or revocation of an approved vendor. The Administrator Certification Section will provide all information/evidence necessary to the Regional Office for inclusion in the Statement of Facts.

1-1420 SAMPLE IMMEDIATE EXCLUSION ORDERS 1-1420

Certified

ORDER TO INDIVIDUAL OF IMMEDIATE EXCLUSION FROM ALL FACILITIES

Date:

To: Name of Employee
Address
City/State/Zip

As a result of an investigation by the California Department of Social Services, a complaint of _____ has been substantiated against you.

The Department has determined that your continued or future contact with clients or presence in any child care facility or residential facility licensed by the California Department of Social Services constitutes a threat to the health and safety of the clients in care. Therefore, you must immediately, upon receipt of this notice, remove yourself from any contact with clients and not be physically present in any facility. This action is final unless you are notified otherwise, in writing, by this Licensing Office. You must also remove yourself from being a board member, executive director or officer of any license.

If you wish to appeal this decision by the Department, you must do so in writing to:

_____
_____
_____
_____

Attn: Employee Exclusion Hearing

The appeal must be mailed within 15 days of the date that this letter was served upon or given to you. Your request must include your current mailing address and a copy of this letter. You will receive an acknowledgment of the request from the Department. You must also notify the Department, in writing, at the address listed above of any subsequent change in your mailing address until the hearing process has been completed or terminated.

1-1420 SAMPLE IMMEDIATE EXCLUSION ORDERS (Continued) **1-1420**

If you fail to appeal this Exclusion Order, or you do appeal and the Department prevails after filing a formal action, you are excluded from all facilities licensed by the Department. You may petition for reinstatement to the Department one year after the effective date of the Exclusion Order pursuant to Government Code Section 11522, which is attached.

You must remain out of, and not have contact with clients in, any child care facility, community care facility, Residential Care Facility for the Elderly or Residential Care Facility for the Chronically Ill until a final decision is made in the matter by the Department.

_____

(Signature)
Regional Office or County Licensing Manager

c: Licensee

*** THIS LETTER IS AVAILABLE IN THE COMMON LIBRARY.**

1-1420 SAMPLE IMMEDIATE EXCLUSION ORDERS (Continued) **1-1420**

ATTACHMENT

GOVERNMENT CODE 11522. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

1-1420 SAMPLE IMMEDIATE EXCLUSION ORDERS (Continued) **1-1420**

DEPARTMENT OF SOCIAL SERVICES
744 P Street, M.S. _____
Sacramento, CA 95814

Certified

ORDER TO LICENSEE/FACILITY OF IMMEDIATE EXCLUSION FROM FACILITY

Date:

To: Licensee
Facility Name & Number
Address
City/State/Zip

As a result of an investigation by the California Department of Social Services, a complaint of _____ has been substantiated against your employee, prospective employee, or other person who has contact with clients _____.

The Department has determined that the continued or future contact with clients or presence of this person in your facility constitutes a threat to the health and safety of the clients in care. Therefore, the Department orders you to remove [EMPLOYEE NAME] from any contact with clients and not allow this employee to be physically present in the facility. This person must also remove themselves from being a board member, executive director or officer of any license. If you fail or refuse to comply with this order, your license to operate a _____ may be suspended or revoked under Health and Safety Code Section 1550 for a community care facility; Section 1568.082 for a Residential Care Facility for the Chronically Ill; Section 1569.50 for a Residential Care Facility for the Elderly; or Section 1596.885 for a child care facility.

If the above mentioned person wishes to appeal regarding this decision, he/she may appeal in writing by addressing a request to:

_____

_____

_____
Attn.: Employee Exclusion Hearing

The excluded person's appeal must be mailed within 15 days of the date the Exclusion Notice was served. The excluded person's request must include his or her current mailing address and a copy of the notice. The excluded person will receive an acknowledgement of the request from the Department. The excluded person must also notify the Department in writing, at the address listed above, of any subsequent change in his or her mailing address until the hearing process has been completed or terminated.

1-1420 SAMPLE IMMEDIATE EXCLUSION ORDERS (Continued) **1-1420**

If the excluded person fails to file a timely appeal of this order or does appeal and the Department prevails after filing a formal action, he/she is excluded from all facilities licensed by the Department. The excluded person may petition for reinstatement to the Department one year after the effective date of the Exclusion Order pursuant to Government Code Section 11522, which is attached.

_____ must remain out of and not have contact with clients in your facility or any other facility until a final decision is made in the matter by the Department.

(Signature)
Regional Office or County Licensing Manager

Attachment: Government Code 11522
c: Employee

*** THIS LETTER IS AVAILABLE IN THE COMMON LIBRARY.**

1-1420 SAMPLE IMMEDIATE EXCLUSION ORDERS (Continued) **1-1420**

ATTACHMENT

GOVERNMENT CODE 11522 A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

1-1425 SAMPLE ACKNOWLEDGEMENT OF APPEAL 1-1425

DEPARTMENT OF SOCIAL SERVICES
744 P Street, M.S. _____, Sacramento, CA 95814

ACKNOWLEDGEMENT OF APPEAL
OF IMMEDIATE EXCLUSION ORDER

Date:

To: Name of Excluded Person
Name of Facility where Formerly Associated
Excluded Individual's Home Address
City/State/Zip Code

This office has received your appeal of the California Department of Social Services action which resulted in your immediate exclusion from facilities licensed by the Department and/or from the clients of those facilities.

You will be receiving further communications from our Legal Division concerning your appeal.

Remember that you may not have contact with clients or be present in any facility licensed by the California Department of Social Services pending this appeal. You must also remove yourself from being a board member, executive director or officer of any license.

_____
(Signature)
Program Administrator

c: Regional Manager or County Equivalent

1-1430 CERTIFIED FAMILY HOME ACTIONS 1-1430

Certified Family Homes of Foster Family Agencies are not, of themselves, licensees. Foster Family Agencies are licensed to recruit, certify and decertify their own family homes. Thus, the Licensing Agency does not directly license Certified Family Homes. However, the Licensing Agency may inspect the homes and, under Health and Safety Code Section 1534(b), may require a Foster Family Agency to deny or revoke certification of a family home if the home is not in compliance with licensing requirements.

A Certified Family Home does not have a right to a hearing from the Licensing Agency if the Foster Family Agency acts on its own initiative to deny certification to a family home, or to decertify a family and no Administrative Action is pursued by the Licensing Agency. However, Health and Safety Code Section 1534(b) provides that the family home shall be afforded the due process provided by the Community Care Facility Act if the Licensing Agency requires the Foster Family Agency to deny or revoke the home's certification. This means that the certified home is entitled to a hearing upon a written appeal when the Licensing Agency requires the Foster Family Agency to deny or revoke the home's certification. Samples of Foster Family Agency letters titled "Order to Deny Certificate of Approval" and "Order to Revoke Certificate of Approval" are included below. The Order to deny or revoke the certificate of approval must be served to both the Foster Family Agency and the Certified Family Home.

In addition, if a member of the Certified Family Home is a licensee (of another facility type, e.g., Family Child Care Homes), a Temporary Suspension Order or Exclusion Order should be considered. (For Temporary Suspension Order, see Reference Material, Enforcement Actions, Sections 1-1010, 1-1205, 1-1210 and 1-1215. For Exclusion Order, see Reference Material, Enforcement Actions, Sections 1-1400, 1410, 1417 and 1450).

1-1430 CERTIFIED FAMILY HOME ACTIONS (Continued) **1-1430**

ORDER TO DENY CERTIFICATE OF APPROVAL

To: Name of FFA
Address

Effective Date:

Subject:

As a result of an investigation by the California Department of Social Services concerning inimical conduct of _____, the Department has determined that the future use of a Certified Family Home of _____ constitutes a threat to the health and safety of clients in care. Pursuant to Health and Safety Code 1534(b), the Department orders your Foster Family Agency to deny the application of _____ to operate a Certified Family Home.

If the individual(s) identified as the prospective Certified Family Home parent(s) above wishes to appeal this decision by the Department, one or both may do so in writing by addressing their appeal to:

Statewide Children's Residential Program Office
Program Administrator
744 P Street, M.S. 8-3-54
Sacramento, CA 95814
Attn: Certified Family Home Action

The appeal must be mailed within 15 days of the effective date of this order. The request by the individual(s) must include their current mailing address and a copy of this order. The individual(s) will receive an acknowledgment of their appeal from the Department. The individual(s) must also notify the Department in writing, at the address listed above, of any subsequent change in their mailing address until the administrative hearing process has been completed or terminated.

Regional Manager
Children's Residential Regional Office

c: Name, Certified Family Home Applicant
Name, Program Administrator

1-1430 CERTIFIED FAMILY HOME ACTIONS (Continued) **1-1430**

ORDER TO REVOKE CERTIFICATE OF APPROVAL

To: **Effective Date:**
Subject:

As a result of an investigation by the California Department of Social Services concerning inimical conduct of _____ the Department has determined that the continued or future use of the _____Certified Family Home constitutes a threat to the health and safety of clients in care. Pursuant to Health and Safety Code Section 1534(b), the Department orders your Foster Family Agency to revoke the Certificate of Approval of _____ to operate a Certified Family Home.

If foster children are currently placed in this home, you must contact the county placement worker to inform them of this Order to Revoke Certificate of Approval. The county placement worker will advise you whether the children must be removed from the home or not as a result of this order.

If you fail or refuse to comply with this order, your license to operate a Foster Family Agency may be revoked under Health and Safety Code Section 1534(b)(9).

If the individual(s) identified as the Certified Family Home parent(s) above wishes to appeal this Order by the Department, one or both may do so in writing by addressing their appeal to:

Statewide Children's Residential Program Office
Acting Program Administrator
744 P Street, M.S. 8-3-54
Sacramento, CA 95814
Attention: Certified Family Home Action

The appeal must be mailed within 15 days of the effective date of this order. The request by the individual(s) must include their current mailing address and a copy of this order. The individual(s) will receive an acknowledgment of their appeal from the Department. The individual(s) must also notify the Department in writing, at the address listed above, of any subsequent change in their mailing address until the administrative hearing process has been completed or terminated.

Name, Regional Manager
Children's Residential Regional Office

Attachment

c: Name, Certified Family Home parent(s)
Name, Program Administrator

1-1450 ACTIONS CONCERNING OTHER PERSONS IN FACILITY 1-1450

A Licensing Agency may, at times, require that a licensee remove or exclude an adult other than an employee from the facility. This type of action will usually occur when the facility is the licensee's own home, such as a Small Family Home, Foster Family Home or Family Child Care Homes, and the person who committed or is responsible for the misconduct that has harmed clients or puts them in risk of future harm resides in or has access to the home. The basis for the Licensing Agency's action might be the person's criminal record, or some other conduct by the person, which poses a danger to clients of the facility.

All decisions to order a licensee to exclude members of the licensee's family from a facility that is his/her home are done on a case-by-case basis. Ordinarily, the Department refrains from ordering a licensee to exclude his/her spouse or minor child from a facility that is the spouse's or child's home. Instead, the Department usually will order that the license be suspended prior to hearing, and will spare the licensee from having to decide whether to obey an order to exclude his/her spouse or child or to face suspension of the license for not doing so. Other relatives or non-relatives of the licensee, however, are not viewed by the Department as having the same right to association with the licensee.

For these more distant relatives and non-relatives, the Department will give the licensee the choice between obeying an order to exclude the person or having his/her license suspended and possibly revoked for not excluding the person.

As is the case with employee actions or Certified Family Home actions, the person who is excluded from the facility by the licensee does not have a right to a State hearing if the exclusion is on the licensee's initiative. However, where the licensee acts to exclude the person only on the directive of the Licensing Agency, the person excluded may have a right to a "due process" hearing. Unlike the case with employee actions and Certified Family Home actions, actions against other persons living in, or present in, the facility are not covered by specific statutes. Nonetheless, principles of constitutional due process may entitle a person to an appeal hearing if they are excluded from the facility by State directive, particularly if the facility is their current residence. Consult the Legal Division for any questions regarding the procedures to follow when the exclusion of a non-employee individual from a facility seems appropriate. Always consult the Legal Division if consideration is being given to excluding a person from their home.

1-1455 EXCLUDING EMPLOYEES, PROSPECTIVE EMPLOYEES OR ANY PERSON WHO IS NOT A CLIENT FROM A LICENSED FAMILY CHILD CARE HOME 1-1455

When an employee or other adult is excluded from a Family Child Care Home, they may not live in the facility or be present in the facility. It is assumed that care is being provided during the normal business hours indicated on the application for licensure. However, Family Child Care Home providers are not limited to providing care only during the hours indicated on their application.

If there is indication that the excluded individual lives in the home, or is present during the normal business hours indicated on the application or at any other time children are in care, even if not during the listed hours of operation, the Licensing Program Analyst must conduct an investigation.

- If the facility is operating and it is proven that the individual lives in the home or was present at any time children were in care, consult the Licensing Program Manager, Regional Manager, and attorney consultant to determine if the presence of the individual warrants a Temporary Suspension Order. (See Reference Material, Enforcement Actions, Sections 1-1205 and 1-1210.)

  NOTE: Refer to Reference Material, Enforcement Actions, Section 1-0070 for civil penalties applicable to the presence of an excluded person violation.

- Administrative Action may also be considered if the individual is present in the facility during the hours of operation, regardless of whether children are present or not. If the facility is operating and it is proven that the individual was present during the hours of operation, but no children were in care, consult the Licensing Program Manager, Regional Manager, and attorney consultant to determine if the presence of the individual warrants a Temporary Suspension Order (see Reference Material, Enforcement Actions, Sections 1-1205 and 1-1210) or revocation (see Reference Material, Enforcement Actions, 1-1010). Additionally, if the individual has a denied exemption, cite and assess an immediate civil penalty.

1-1600 SUBPOENAS 1-1600

A subpoena is a written order usually commanding a person to appear at a particular time and place. A subpoena duces tecum can also be used to obtain copies of medical records or other documents. The California Department of Social Services Subpoena Duces Tecum (LIC 967) is to be completed by the Licensing Program Analyst who requires the subpoena.

Subpoenas must be personally served upon the person being commanded to appear or provide records or documents. A subpoena is served by the Licensing Program Analyst, Investigator or the Legal Division staff.

General procedures for service are outlined below:

1. You will be given an original subpoena and a copy. Give the copy to the person being served; do not give her/him the original. Show the original at the time but do not give it to him/her.

2. The face (front page) of the subpoena will be completed before it is given to you. After you serve the copy of the subpoena, complete the "Proof of Service" on the back of the subpoena.

3. Be sure to ask any persons you approach if they are the named persons. If so, tell them that you have some papers for them and then hand the copy to them.

   The person named in the subpoena must be the person actually served. Giving the subpoena to another individual, such as the person's spouse or roommate, when the person is not home, is not sufficient.

4. If the person asks for the original subpoena, tell him/her that the copy is true and contains all the necessary information.

5. If the person refuses to take the subpoena, or closes the door, simply put the subpoena on the floor, on the doorstep, or slide it under the door. These actions complete the service.

6. Remember to not argue with the person.

7. Complete the Proof of Service immediately after serving the person and forward it with the original subpoena directly to the Legal Division as soon as possible.

If there are any complications or questions, contact your Licensing Program Manager or Legal Consultant.

1-1700 KEYS AMENDMENT AFFECTING SUPPLEMENTAL SECURITY INCOME/STATE SUPPLEMENTARY PROGRAM RECIPIENTS 1-1700

The California Department of Social Services has certified to the United States Department of Health and Human Services that California Department of Social Services is complying with the provisions of the Keys Amendment. This certification obligates California Department of Social Services to distribute certain free information to interested individuals and to maintain a mechanism through which facility clients and the Social Security Administration are notified when an administrative decision is adopted to revoke the license of any facility, which cares for SSI recipients. Once notified, Social Security Administration may reduce the payment level for any Supplemental Security Income/State Supplementary Program recipient who continues to live in an unlicensed facility.

When an Administrative Action is adopted to revoke the license of a facility in which one or more of the clients are Supplemental Security Income/State Supplementary Program recipients, the Legal Division will notify the appropriate Licensing Office.

At the time the facility is given formal notice of revocation, the Licensing Agency shall:

1. Personally hand each Supplemental Security Income/State Supplementary Program recipient a Notice of Revocation Action (LIC 986A) and/or provide an oral explanation regarding the impact that the license revocation may have on his/her SSI payment level.

2. Send a copy of the above notification to each SSI recipient's authorized representative.

3. Notify clients not receiving Supplemental Security Income/State Supplementary Program.

1-1800 STATE LICENSING MATCH SYSTEM 1-1800

1. The Central Operations Branch State Licensing Match System Coordinator is responsible for the coordination of the State Licensing Match System match. The Child Support Bureau generates a monthly file of absent parent/licensees, consolidated from the 58 County District Attorney offices, and transmits to all participating Licensing Agencies. The Central Operations Branch State Licensing Match System coordinator performs an annual match of the Child Support Bureau file against the Community Care Licensing Division Licensing Information System file of new applicants.

1-1800 STATE LICENSING MATCH SYSTEM (Continued) **1-1800**

2. Once a match has been determined, the Central Operations Branch State Licensing Match System coordinator will input the match information into the Licensing Information System Personnel sub-system and send a "Notification of Intent to Withhold Issuance of License" letter to the applicant with a copy (c:) mailed to the Regional Office. This letter is to inform the applicant that they have been reported by a District Attorney as owing at least 30 days in unpaid child support.

3. The copy of the Notification of Intent letter sent to the Regional Office shall be given to the Licensing Program Analyst responsible for the pending application. Since the Notification of Intent letter contains confidential information it must be filed in the Confidential Section of the facility file. See sample Notification of Intent to Withhold Issuance of License letter attached.

1-1810 NEW APPLICANTS **1-1810**

Family Code Section 17520

This program seeks to prevent any absent parent/licensee who is at least 30 days in arrears on his/her court-ordered child support obligation from receiving initial issuance of his/her business or professional license without first paying or making an agreement to pay his/her unpaid child support. The Regional Office shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the State Licensing Match System certified list. In the event that an application for a license is denied, any fees paid by the applicant shall not be refunded by the Community Care Licensing Division.

ISSUANCE OF TEMPORARY LICENSE

1. At the time of initial licensure, if the Regional Office has received a Notification of Intent letter which identifies the applicant as a match and a release has not been received from the State Licensing Match System Coordinator, then the Regional Office is to issue a 150-day temporary license according to statute. Family Code Section 17520 states the Licensing Agency will issue a temporary license. Community Care Licensing Division staff are instructed to utilize the provisional license in order to implement this statute. A copy of the provisional license shall be forwarded to the Central Operations Branch State Licensing Match System Coordinator.

2. Applicants will not be issued a permanent license unless the District Attorney provides the Central Operations Branch State Licensing Match System Coordinator with a release form. If a release form is received, a copy will be forwarded by the Central Operations Branch State Licensing Match System Coordinator to the Regional Office for issuance of a permanent license.

1-1810 NEW APPLICANTS (Continued) **1-1810**

EXPIRATION OF TEMPORARY LICENSE

1. During the 150-day temporary license term, the applicant is responsible for making payment arrangements with the District Attorney's office. Per statute, the temporary license cannot be extended. The Central Operations Branch State Licensing Match System Coordinator will send out a "Notification of Expiration of Provisional License" letter ten days prior to the expiration. This letter is to inform the applicant that a release form has not been received and their license will expire in ten days. See sample of Notification of Expiration of Provisional License below.

2. If the applicant fails to comply with the provisions of Family Code Section 17520 within 150 days, the facility cannot continue to operate and the application for a permanent license is denied.

3. The applicant has no appeal rights to the Department.

4. Once the unpaid child support is paid, or arrangements for payment are made with the District Attorney, the applicant may submit a new application, with new application fees.

1-1810 NEW APPLICANTS (Continued) **1-1810**

Below is a sample of the Notification of Intent to Withhold Issuance of License letter that is sent out by the Central Operations Branch State Licensing Match System Coordinator. Attached to the letter is a form for the applicant to request a review from the District Attorney's office.

NOTIFICATION OF INTENT TO WITHHOLD ISSUANCE OF LICENSE

THE STATE OF CALIFORNIA, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES PARTICIPATES IN THE STATE LICENSING MATCH SYSTEM PROGRAM. THE PROGRAM SEEKS TO PREVENT ANY ABSENT PARENT/LICENSEE WHO IS AT LEAST 30 DAYS IN ARREARS ON HIS/HER COURT-ORDERED CHILD SUPPORT OBLIGATION FROM RECEIVING EITHER INITIAL OR PERMANENT ISSUANCE OF HIS/HER LICENSE WITHOUT FIRST PAYING OR MAKING AN AGREEMENT TO PAY HIS/HER UNPAID CHILD SUPPORT.

PURSUANT TO SECTION 17520 OF THE FAMILY CODE, THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, COMMUNITY CARE LICENSING DIVISION IS REQUIRED TO WITHHOLD ISSUANCE OF YOUR COMMUNITY CARE LICENSE. THIS ACTION HAS BEEN TAKEN BECAUSE YOUR NAME HAS BEEN IDENTIFIED AS A PROBABLE MATCH ON THE LISTING OF ABSENT PARENTS/LICENSEES. THIS LISTING WAS PROVIDED BY THE FOLLOWING DISTRICT ATTORNEY'S OFFICE:

D.A. COUNTY:
ADDRESS:

TELEPHONE: (000) 000-0000
CASE I.D.: 0000000000

THIS IS YOUR FORMAL NOTIFICATION THAT IT IS YOUR RESPONSIBILITY TO RESOLVE THIS MATTER. UNTIL PROOF OF RESOLUTION IS PROVIDED TO THE COMMUNITY CARE LICENSING DIVISION, YOU WILL NOT BE ISSUED A PERMANENT LICENSE. YOU MAY ONLY BE ISSUED A TEMPORARY LICENSE FOR A MAXIMUM OF 150 DAYS. YOUR TEMPORARY LICENSE CANNOT BE EXTENDED. FAILURE TO RESOLVE THIS ISSUE WITHIN 150 DAYS WILL RESULT IN EXPIRATION OF YOUR TEMPORARY LICENSE. ANY FEES PAID BY AN APPLICANT WILL NOT BE REFUNDED.

1-1810 NEW APPLICANTS (Continued) **1-1810**

IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER, PLEASE CONTACT THE DISTRICT ATTORNEY FAMILY SUPPORT DIVISION AT THE ADDRESS AND TELEPHONE NUMBER PROVIDED ABOVE. WHEN THIS MATTER IS RESOLVED, THE COMMUNITY CARE LICENSING DIVISION WILL AUTOMATICALLY RECEIVE A NOTICE OF CLEARANCE FROM THE DISTRICT ATTORNEY'S OFFICE.

DATE NOTIFICATION LETTER MAILED: 00/00/00

LICENSING AGENCY: Community Care Licensing

LICENSE TYPE:

LICENSE NUMBER: 000000000

ABSENT PARENT: John Doe
ADDRESS: 111 Dead Beat Ave.
Sacramento, CA 95000

SSN: 000-00-0000 CASE I.D.: 00000000

STATE LICENSING MATCH SYSTEM
REQUEST FOR REVIEW

IF YOU WISH TO CONTEST THIS ACTION, YOU MAY ASK THE DISTRICT ATTORNEY FAMILY SUPPORT DIVISION LISTED BELOW TO REVIEW YOUR CHILD SUPPORT CASE. YOU MUST REQUEST A REVIEW BY SETTING FORTH THE REASONS YOU DISAGREE WITH THIS ACTION IN THE SPACE PROVIDED BELOW. YOU SHOULD MAIL YOUR REQUEST FOR REVIEW TO THE DISTRICT ATTORNEY FAMILY SUPPORT DIVISION AS SOON AS POSSIBLE SO THAT YOUR CASE CAN BE REVIEWED BEFORE THE 150-DAY PERIOD EXPIRES.

SOME POSSIBLE REASONS WHY YOU MAY CONTEST THIS ACTION ARE: THIS IS A CASE OF MISTAKEN IDENTITY, NO SUPPORT JUDGMENT WAS ENTERED AGAINST YOU, BANKRUPTCY LAWS IN EFFECT AT THE TIME OF YOUR FILING FOR BANKRUPTCY DISCHARGED YOUR SUPPORT OBLIGATIONS, OR YOU DO NOT OWE DELINQUENT CHILD SUPPORT. YOU MAY ALSO REQUEST BELOW THAT THE DISTRICT ATTORNEY FAMILY SUPPORT DIVISION ESTABLISH A PAYMENT SCHEDULE FOR YOU TO REPAY YOUR UNPAID CHILD SUPPORT OBLIGATIONS IF CIRCUMSTANCES WARRANT.

1-1810 NEW APPLICANTS (Continued) **1-1810**

THIS ACTION IS AUTHORIZED UNDER FAMILY CODE SECTION 17520.

REASONS WHY I CONTEST THIS ACTION ARE:

_____
_____
_____
_____
_____

SIGNATURE_____ DATE_____

RETURN THIS COMPLETED FORM TO:

D.A.
TELEPHONE NUMBER: (000) 000-0000

D.A.
ADDRESS:

1-1810 NEW APPLICANTS (Continued) **1-1810**

DEPARTMENT OF SOCIAL SERVICES
744 P Street, M.S. _____, Sacramento, CA 95814

DATE

NAME
ADDRESS
CITY/STATE/ZIP

NOTIFICATION OF EXPIRATION OF PROVISIONAL LICENSE

Your provisional license will expire in ten days. The Community Care Licensing Division has not received a release form from the District Attorney's office which identifies you as a probable match being in arrears at least 30 days of unpaid child support. Your provisional license will not be extended.

If you allow your provisional license to expire, you may not continue to operate your facility. Any fees paid will not be refunded. If you allow your provisional license to expire without making arrangements with your District Attorney's office, you will no longer have a valid license to operate a facility.

In accordance with Health and Safety Code Sections 1540, 1569.40, 1568.03 and 1596.80, your continued operation without a license will result in civil and/or criminal action being taken against you.

1-1820 LICENSEES 1-1820

Family Code Section 17520

The State Licensing Match System seeks to prevent any absent parent/licensee who is at least 30 days in arrears on his/her court ordered child support obligation from receiving initial issuance or renewal of his/her business or professional license without first paying or making an agreement to pay his/her unpaid child support.

STATE LICENSING MATCH SYSTEM MATCH

1. Since a renewal process no longer exists, we will not pursue license revocation under Welfare and Institutions Code Statute.

2. However, the Central Operations Branch State Licensing Match System Coordinator will send a "Licensee Notification" letter to the licensee, anticipating that they will cooperate with the District Attorney and fulfill their child support obligation. If the licensee fails to meet his/her obligation, the Central Operations Branch State Licensing Match System Coordinator may pursue administrative action against the licensee. All activities related to this procedure will be handled by Central Operations Branch.

3. If it is determined by the Central Operations Branch State Licensing Match System Coordinator that the licensee's conduct supports an administrative action due to conduct inimical, such action may be pursued.

1-1820 STATE LICENSING MATCH SYSTEM LICENSEES 1-1820
(Continued)

Below is a sample of the Licensee Notification letter that is sent out by the Central Operations Branch State Licensing Match System Coordinator. Attached to the letter is a form for the licensee to request a review from the District Attorney's office.

LICENSEE NOTIFICATION

THE STATE OF CALIFORNIA, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES PARTICIPATES IN THE STATE LICENSING MATCH SYSTEM PROGRAM. THE PROGRAM SEEKS TO PREVENT ANY ABSENT PARENT/LICENSEE WHO IS AT LEAST 30 DAYS IN ARREARS ON HIS/HER COURT ORDERED CHILD SUPPORT OBLIGATION FROM RECEIVING EITHER INITIAL OR PERMANENT ISSUANCE OF HIS/HER LICENSE WITHOUT FIRST PAYING OR MAKING AN AGREEMENT TO PAY HIS/HER UNPAID CHILD SUPPORT.

PURSUANT TO SECTION 17520 OF THE FAMILY CODE, THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, COMMUNITY CARE LICENSING DIVISION IS REQUIRED TO NOTIFY YOU THAT THIS ISSUE MUST BE RESOLVED OR IT MAY AFFECT YOUR LICENSING STATUS. THIS NOTIFICATION IS BEING SENT TO YOU BECAUSE YOUR NAME HAS BEEN IDENTIFIED AS A PROBABLE MATCH ON THE LISTING OF ALL ABSENT PARENTS/LICENSEES. THIS LISTING WAS PROVIDED BY THE FOLLOWING DISTRICT ATTORNEY'S OFFICE:

D.A. COUNTY:
ADDRESS:

TELEPHONE :
CASE I.D.: 0000000000

THIS IS YOUR FORMAL NOTIFICATION THAT IT IS YOUR RESPONSIBILITY TO RESOLVE THIS MATTER. IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER, PLEASE CONTACT THE DISTRICT ATTORNEY FAMILY SUPPORT DIVISION AT THE ADDRESS AND TELEPHONE NUMBER PROVIDED ABOVE. WHEN THIS MATTER IS RESOLVED, THE COMMUNITY CARE LICENSING DIVISION WILL RECEIVE A NOTICE OF CLEARANCE FROM THE DISTRICT ATTORNEY'S OFFICE.

1-1820 STATE LICENSING MATCH SYSTEM LICENSEES 1-1820
(Continued)

DATE NOTIFICATION LETTER MAILED: 07/01/95
LICENSING AGENCY: Community Care Licensing

LICENSE TYPE:	
LICENSE NUMBER:	
ABSENT PARENT NAME:	John Doe
ADDRESS:	111 Dead Beat Ave. Sacramento, CA 95000
SSN:	000-00-0000
CASE I.D.:	0000000000

STATE LICENSING MATCH SYSTEM
REQUEST FOR REVIEW

IF YOU WISH TO CONTEST THIS ACTION, YOU MAY ASK THE DISTRICT ATTORNEY FAMILY SUPPORT DIVISION LISTED BELOW TO REVIEW YOUR CHILD SUPPORT CASE. YOU MUST REQUEST A REVIEW BY SETTING FORTH THE REASONS YOU DISAGREE WITH THIS ACTION IN THE SPACE PROVIDED BELOW. YOU SHOULD MAIL YOUR REQUEST FOR REVIEW TO THE DISTRICT ATTORNEY FAMILY SUPPORT DIVISION AS SOON AS POSSIBLE SO THAT YOUR CASE CAN BE REVIEWED BEFORE THE 150 DAY PERIOD EXPIRES.

SOME POSSIBLE REASONS WHY YOU MAY CONTEST THIS ACTION ARE: THIS IS A CASE OF MISTAKEN IDENTITY, NO SUPPORT JUDGMENT WAS ENTERED AGAINST YOU, BANKRUPTCY LAWS IN EFFECT AT THE TIME OF YOUR FILING FOR BANKRUPTCY DISCHARGED YOUR SUPPORT OBLIGATIONS, OR YOU DO NOT OWE DELINQUENT CHILD SUPPORT. YOU MAY ALSO REQUEST BELOW THAT THE DISTRICT ATTORNEY FAMILY SUPPORT DIVISION ESTABLISH A PAYMENT SCHEDULE FOR YOU TO REPAY YOUR UNPAID CHILD SUPPORT OBLIGATIONS IF CIRCUMSTANCES WARRANT.

THIS ACTION IS AUTHORIZED UNDER FAMILY CODE SECTION 17520.

1-1820 STATE LICENSING MATCH SYSTEM LICENSEES 1-1820
(Continued)

REASONS WHY I CONTEST THIS ACTION ARE:

_____
_____
_____
_____
_____

SIGNATURE _____ DATE _____

RETURN THIS COMPLETED FORM TO:

D.A. D.A.
TELEPHONE NUMBER ADDRESS: