

EVALUATOR MANUAL TRANSMITTAL SHEET

<u>Distribution:</u> <input type="checkbox"/> All Child Care Evaluator Manual Holders <input type="checkbox"/> All Residential Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Evaluator Manual Holders	<u>Transmittal No.</u> 06RM-07
	<u>Date Issued</u> July 2006

Subject:

REFERENCE MATERIAL – ENFORCEMENT ACTIONS

Reason For Change:

To:

- revise the Child Abuse Central Index definition
- revise the Child Abuse Central Index check definition
- revise CBCB definition
- add a Live Scan definition
- add policy regarding chain facilities
- add policy regarding dual licensed facilities

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7, 9, 13, 13.1

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Approved:

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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: In 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

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.

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.

1-0040 CIVIL PENALTIES, GENERAL STATEMENT**1-0040**

Assessment of civil penalties is one method used to gain compliance from the licensee. Civil penalties are assessed for Serious Deficiencies (Type A and Type B) which are not corrected by the Plan of Correction Date; violation of fingerprint requirements; unlicensed facilities; violations that lead to death, injury, or sickness of a client; and/or repeat violations under specific conditions.

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 titled Quick Reference.

1-0045 CATEGORIES OF CIVIL PENALTIES**1-0045**

Civil penalties fall into six categories: (1) civil penalties for unlicensed facility operation, (2) civil penalties for fingerprint violations, (3) civil penalties for failure to meet the Plan of Correction Date, (4) civil penalties for family day-care licensees that fail to give "The Parent's Rights Addendum" to parents or maintain a signed copy in their files or give a copy of the "Addendum" to the Department of Social Services, (5) progressive civil penalties, and (6) civil penalties for violations leading to death, injury, or sickness.

1-0050 UNLICENSED FACILITIES**1-0050**

Civil penalties for unlicensed facilities apply to **ALL** facility types. When an unlicensed facility is identified, a Notice of Operation in Violation of Law is issued. Civil penalties are assessed as described below unless operation ceases.

- **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.

1-0050 UNLICENSED FACILITIES**1-0050**

- **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.

Completed Application Requirements

Residential Care Facilities for the Elderly; see Section 87218.

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

Community Care Facilities; see Section 80018.

Family Child Care Homes; see Section 102393.

Child Care Centers, see Section 101169.

1-0055 BACKGROUND CHECK VIOLATIONS**1-0055**

Civil penalties for background check violations apply to **all** facility categories. This civil penalty results from allowing an individual, who is subject to a background check, to work or reside in the facility without:

1. a criminal record clearance or exemption,
2. requesting a clearance transfer or
3. requesting and receiving approval of an exemption transfer.

See EM Section 7-1100 for specific instructions regarding chain facilities.

Prior to each licensing visit, review the facility file for citations for allowing an individual without a criminal record clearance or exemption to work or reside 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 or residing 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 or residing at the facility.
 2. Cite the deficiency.
 3. Assess immediate CP for the number of days that you can substantiate the individual worked or resided in the facility, up to a maximum of 5 days.
 4. If the licensee has been cited for this type of violation within the last 12 months, assess the immediate CP for the number of days that you can substantiate the individual worked or resided in the facility, up to a maximum of 30 days.

1-0055 BACKGROUND CHECK VIOLATIONS (Continued)

1-0055

- If an individual, working or residing in the facility, has a criminal record exemption but the individual is associated to another facility, give the licensee a 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 as outlined above.
- If an individual, working or residing in the facility, has a criminal record clearance but the individual is associated to another facility, give the licensee a transfer request form (LIC 9182) and have him/her complete the form during the visit. See EM Section 7-1100 for transfer instructions. Cite the deficiency. Civil penalty assessment is optional. Consult your Licensing Program Manager.

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.

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, as described above, penalties must be assessed.

- If the 18 year old is an employee or a non-dependant 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 dependant 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-dependant 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 dependant family member of the licensee he/she cannot be removed. Initiate administrative action to revoke the license. Consult with legal.