
EVALUATOR MANUAL TRANSMITTAL SHEET

<p><u>Distribution:</u></p> <p><input type="checkbox"/> All Child Care Evaluator Manual Holders</p> <p><input type="checkbox"/> All Residential Care Evaluator Manual Holders</p> <p><input checked="" type="checkbox"/> All Evaluator Manual Holders</p>	<p><u>Transmittal No.</u> 07RM-12</p> <hr/> <p><u>Date Issued</u> December 2007</p>
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Subject:

REFERENCE MATERIAL – FACILITY EVALUATION VISITS

Revisions Made To:

Section 3-4200 Facility Evaluation

Filing Instructions:

REMOVE: pages 4 - 10

INSERT: pages 4 – 10.1

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3-4200 FACILITY EVALUATION

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The facility evaluation is the most important job performed by the Licensing Program Analyst. Through the evaluation process, one, two or all three components of the Community Care Licensing Division's program (prevention, compliance and enforcement) are implemented. Using this process during the site visit, the Licensing Program Analyst will evaluate **whether** the facility is in substantial compliance with licensing laws and regulations. Substantial compliance is determined by an evaluation of the overall conditions of the facility and the health and safety of clients in care. During this evaluation, the Licensing Program Analyst will assess the various levels of violations and determine whether to cite the facility, provide verbal or written consultation or initiate no action at all. A flow chart of this process is shown in Section 3-4210. This process applies to all facility categories, including **F**amily **C**hild **C**are **H**omes and **F**oster **F**amily **H**omes.

The purpose of citing facilities for violations of regulations is to ensure the health, safety and personal rights of the clients in care. When a violation of a regulation is observed, the Licensing Program Analyst has a responsibility to determine and assess if a citation is to be issued and the length of time by which correction must be **completed**. The basic factors to be considered in making this assessment are the consequences to those in care, the immediacy of the need to correct, the frequency of occurrences and the specific regulatory and/or statutory requirement. This assessment focuses on the type of clients served and the facility plan of operation. After making an assessment based on this criteria, the Licensing Program Analyst may cite a violation giving an immediate (24 hour) plan of correction, cite a violation with a longer plan of correction or provide consultation without issuing a citation.

A,B & C Type Violation

The following is an explanation and examples of the three types of violations and how they are to be addressed by the Licensing Program Analyst. Actual documentation samples will be provided in the Documentation Section of the Evaluator Manual and through staff training.

Type A: Immediate Health, Safety or Personal Rights Impact - Are violations of the regulations and the Health and Safety Code that, if not corrected, have a direct and immediate risk to the health, safety or personal rights of those in care. Citations for these violations will always be **issued** even if the violation is corrected during the site visit (corrections will be noted on the licensing report). In some instances, violations of these types of regulations may present such a severe threat that it would require suspension or revocation of a license. In all cases the licensee must initiate corrective action to render the situation harmless as soon as possible. In most instances, full compliance is to be completed on the spot or within a 24-hour period. However, in some instances the final correction may be extended for up to 30 days if the licensee has initiated corrective action to minimize or eliminate the health and safety risk, the facility has a history of compliance, or other factors such as transfer trauma and the availability of an alternate placement. The Licensing Program Analyst must first consider these elements when granting this **an** extension.

EXAMPLES OF TYPE A VIOLATIONS: (AS APPLIED TO SPECIFIC HEALTH AND SAFETY SUBJECT AREAS)

- **Criminal Record Clearance and Child Abuse Index Check** – For all individuals who work, reside or have contact with clients, failure to obtain a criminal record clearance or exemption and, for facilities that care for children, a Child Abuse Index Check clearance.

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- **Fire Safety** - Violations of fire clearance regulations include over capacity, non-ambulatory clients when cleared for ambulatory only, or failure to maintain smoke detectors and/or fire extinguishers' in operating condition. Since the Department is dependent upon fire authorities to determine appropriate fire and life safety standards, the licensee must always operate within the terms and limitations of the license and be approved by the State Fire Marshal or local fire authority.
- **Personal Rights** - Violations that have a direct negative impact on either the physical or emotional well being of clients and children in care. These include violations such as: physical abuse, sexual abuse, verbal abuse, neglect, withholding food and water, the inappropriate use of restraints, locking clients/children in buildings (without licensing approval); the use of corporal punishment and the failure to safeguard the cash resources and/or valuables of those in care. In addition to immediate correction of personal rights violations, the licensee may be required to take other appropriate measures such as the suspension of employees and meeting reporting requirements.
- **Telephones** - Failure to have a working telephone on the facility premises.
- **Health Related Services** - Failure to treat injuries or illness and/or summon emergency medical personnel or a physician for injuries or illness; failure to ensure that needed medical care is provided to those in care; unlocked medications; inappropriate storage of medications (e.g. not refrigerating medications that require refrigeration); using or storing mislabeled, unlabeled, outdated or discontinued medications; not assisting with the taking of medications; or not dispensing medications "as prescribed".
- **Food Service** - Failure to maintain enough food to meet the needs of the clients for the next 24 hours; food contaminated with mold, fungus or bacteria; bloated or ruptured canned foods; infestation of insects or vermin; unsanitary conditions in food preparation areas that present an immediate health hazard; storing food next to or with toxic substances or poisons; or not providing modified diets as prescribed by a physician.
- **Care and Supervision** - Failure to meet staffing ratio or staff are not present to meet the needs of clients in care; clients require a level of care that cannot be met by facility staff; Indicators of care and supervision problems include evidence of abuse, neglect, injuries or personal rights violations; wandering and AWOL clients; public nuisance complaints and other incidents that can be directly attributed to a lack of supervision.
- **Buildings and Grounds** - No fence or approved cover for bodies of water; broken window glass in accessible areas; exposed live electrical wires; broken stairs or stair railings; poisons, toxic substances, materials with sharp or jagged edges and/or firearms in areas accessible to clients/children; unlit stairwells used by clients; broken or sharp edges on play equipment; or no cushioning under play equipment.
- **Fixtures, Furniture, Equipment and Supplies** - Facility toilets are not in working condition or unavailable to clients; garbage is accessible to clients/children (excluding paper waste); unscreened fireplace or heaters that are in use; water is over 120 degrees F.; condition of bedding or towels is unsanitary to the extent it is a health and safety risk; furniture is broken and could cause injury if used; or failure to maintain enough basic hygiene items to meet the needs of those in care for the next 24 hours.

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- **Water Supply** - No current bacteriological analysis on private water source which establishes the safety of the water; or drinking water is not available

Type B: Potential Health, Safety or Personal Rights Impact - Violations of the regulations and the Health and Safety Code that, without correction, could become an immediate risk to the health, safety or personal rights of clients, or record keeping violation that would impact the care of clients and/or protection of their resources, or a violation that would impact those services required to meet clients' needs. If correction is made during the site visit, a verbal or written consultation may be provided to the licensee by the Licensing Program Analyst. However, there may be a situation where the licensee repeats the same violation(s) over and over again due to apparent carelessness or intentional disregard of the regulations, the Licensing Program Analyst may issue a citation, require an explanation of the immediate or potential impact on the clients and/or on the facility's plan of operation.

The decision by the Licensing Program Analyst to issue a citation or provide either a written or verbal consultation is based on the history of the facility, the frequency and degree of the violation, current overall condition of the facility and the existence of other violations. If the violation is not corrected during the site visit, a citation is always issued. The Licensing Program Analyst must be able to justify all citations, his or her findings and the course of action provided to the licensee to insure correction.

EXAMPLES OF TYPE B VIOLATIONS: (AS APPLIED TO SPECIFIC HEALTH AND SAFETY SUBJECT AREAS)

- **Reporting Requirements** - Failure to notify the Department within the next working day and provide a written report regarding incidents of abuse, neglect, death, injury which requires treatment by a licensed medical professional, fires or other disasters.
- **Record Keeping** - Failure to provide documented verification of staff qualifications; the designated administrator is not certified or has an expired administrator certificate; lack of admission agreements, immunization records, staff medical assessments, needs and services plans; no record of client's personal and incidental funds; or no client medical records.
- **Personal Rights** - Failure to make arrangements for religious services; opening of client's mail without authorization; restriction of phone use or visitors without approval from licensing.
- **Health Related Services** - No first aid supplies; failure to isolate clients/children with obvious signs of illness; or failure to notify parents of any illness or injury in a facility more serious than minor cuts and scratches.
- **Food Service** - Failure to maintain the required perishable and non-perishable food supplies; lack of menus to verify that clients dietary needs are met; failure to clean and sanitize dishes and utensils to ensure there is an adequate supply for the next meal; or malfunctioning refrigerator, freezer or stove that does not pose an immediate risk to clients, e.g. spoiled food.
- **Planned Activities** - No planned activities or notice of planned activities on file.

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- **Buildings and Grounds/Personal Accommodations** - Changes/alterations in the use of the facility that could impact the capacity determination; multiple conditions that indicate an overall deterioration of the facility; or the failure to implement the plan of operation which includes maintenance and housekeeping. Indicators of an overall deterioration and failure to implement the plan of operation include widespread neglect of maintenance or unsanitary living and food preparation areas with no evidence of on-going corrective action.
- **Furniture, Fixtures, Equipment and Supplies** - Quality of furnishings should be cited as a Type B violation only when they are clearly damaged to the extent they are not functional (i.e. dresser is shabby, but operational vs. one that is broken and non-functional; a tear in the seat of a chair vs. exposed springs); inadequate number of toilets and sinks to meet the needs of the clients; or failure to provide a set of linens to each client.

Type C: Technical Conditions - Are for violations of the regulations that do not present an immediate (Type A) or potential (Type B) risk to the health, safety or personal rights of clients in care and where the licensee has complied with the regulatory requirements substantially in degree, frequency and intent. No citations will be issued for a technical violation(s).

Frequent Type C violations generally do not pose an immediate health and safety risk, but may be indicators of carelessness, intentional disregard, or problems with the facility plan of operation. Frequent or widespread violations of regulations that are usually considered technical can be elevated to a Type A or Type B if it is determined that an immediate or potential risk exists. In these cases, the violation is no longer considered technical (Type C) and is cited as either a Type A or Type B violation. When writing the deficiency statement on the Licensing Report, the Licensing Program Analyst must describe the condition and the impact on the health, safety or personal rights of the clients and/or the facility plan of operation.

For violations that are technical, the Licensing Program Analyst has the option of providing verbal or written consultation. The decision to provide either written or verbal consultation depends on the Licensing Program Analyst's assessment based on the history of the facility, the frequency of the violations, the existence of other violations and the current overall facility operation. Written consultation for technical violations may include a description of specific items or groups of items to describe the general conditions of the facility. Failure to correct past technical violations alone does not warrant citation at subsequent visits if the conditions do not create a potential care and safety consequence. The primary objective of the written or verbal consultation is to ensure that the situation does not deteriorate further. Please refer to **EM** Section 3-4400 on Verbal/Written Consultation.

EXAMPLES OF TYPE C VIOLATIONS:

- **Reporting Requirements** - Failure to either call in or follow up with a written report those incidents not listed in Type B; missing information that is not critical on the incident report; reports not received in a timely manner when the licensee has reported all relevant information by phone.
- **Record Keeping** - Documents that are centrally stored that are required to be in each file; missing information on forms that is not critical to the care and services provided; a review of a significant sample size of required documents indicates only one document missing; or client's records do not indicate ambulatory status and the evaluator has observed client is fully ambulatory.

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- **Health Related Services** - One or two items missing from the first aid supplies.
- **Food Service** - Menus that are not dated; home-canned foods stored at facility and there is no evidence of contamination or that they are used by clients.
- **Building and Grounds** - Failure to obtain prior approval for minor construction or alterations that do not affect the services or capacity determination e.g., new garage door or new windows; defects on walls, ceiling, carpeting, floors, or tiles that do not create a dangerous condition.
- **Fixtures, Furniture, Equipment and Supplies** - Hot water temperature is two or three degrees below the minimum; or drawer space is available but does not meet the minimum requirements, i.e. one drawer large enough to accommodate all clothing instead of the minimum requirement of two drawers.

VISIT PROTOCOL

Prior to conducting a site visit, the Licensing Program Analyst must thoroughly review the facility file to familiarize himself/herself with the history of the facility and the client population served. For further instructions see Section 3-4150 Review of Facility File.

The Licensing Report LIC 809 will be used for all Required Annual Visits and Random_Sample Visits. Apply the following criteria for all facility categories:

Before or upon entering the facility, the Licensing Program Analyst must identify himself/herself to the licensee, or person in charge and explain the purpose of the visit. At this stage of the visit, it is important to establish good communication and allow the facility licensee or person in charge to discuss any concerns he/she may have regarding the visit. The site evaluation then must begin with an overall assessment of the facility. Throughout this evaluation, the Licensing Program Analyst will be making observations and taking notes. The facility evaluation includes, but is not limited to the following:

1. A walk through to inspect the entire facility and overall maintenance and operation, i.e. physical plant, building and grounds, and furniture, fixtures, equipment and supplies. The Licensing Program Analyst should always provide the option for the licensee or person in charge to accompany him/her during the walk through.
2. Interview a small sample of clients/residents and discuss any particular areas of interest and concern (i.e. food services, medication, care and supervision).
3. Determine if records are available and in place to review during the evaluation.
4. A complete review of regulations applicable to the facility category.
5. Documentation of Type A and Type B violations and Type C technical violations using either verbal and/or written consultation.

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6. Completion of the exit interview with the facility operator or person in charge. During the exit interview it is the Licensing Program Analyst's responsibility to review each violation and correction due date and provide verbal or written consultation on how corrections can be made. The licensee or person in charge is responsible for providing a written plan of correction on the licensing report for each violation cited.

Advise the licensee of their appeal rights and the procedures to follow. Provide the licensee with a copy of the LIC 9058 (Applicant/Licensee Rights and Appeal Procedures form). The licensee should also be informed that the appeal must be filed within ten days from the date of the report. Instructions on how to file the appeal are on the LIC 9058 form.

ASSESSING THE RISK OF VIOLATIONS

The Licensing Program Analyst must analyze the seriousness of each violation(s), document the findings and the appropriate course of action using the notations and observations he/she has made during the site visit. A risk assessment is necessary at times to help determine whether a violation of a regulation or statute is type A or type B.

1. Identify the problem (violation)

Licensing Program Analyst may only cite a regulation or statute.

For clarity, the Licensing Program Analyst must refer to the most specific regulation or statute when citing.

Is the regulation/statute specific or is it general?

Specific example: 80074(a) Only drivers licensed for the type of vehicle operated shall be permitted to transport clients.

General example: 80078(a) The licensee shall provide care and supervision as necessary to meet the client's needs.

2. Determine the Risk

The formula for this type of assessment is:

Risk = Severity of the outcome & Probability of harm

In order to assess risk, the Licensing Program Analyst must combine the severity of potential outcome with the probability of harm. When both are high, then the risk is high and the violation would most likely be a type A violation. As the risk diminishes, careful consideration should be given to whether the violation is type A or not. The Licensing Program Analyst must use these assessment criteria when evaluating whether to issue a Type A or B citation.

a. Assess Severity of Outcome.

Gauge the possible negative health or safety outcomes. Include all possible outcomes in the assessment.

Example:

One burned out light bulb in an 8 light chandelier would not result in serious harm, whereas a burned out light bulb over a dark stairwell has the potential of a serious injury.

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b. Assess Probability of Harm.

How likely is harm to occur as a result of the violation?

Examples:

- A broken light bulb with exposed shards in a table lamp in a common living area presents a greater probability of harm than exposed shards on a broken light bulb in a 20 foot high ceiling fixture.
- A door leading to basement steps is left open:
 - If a client is an infant or physically disabled, the risk may be much greater.
 - If clients are present but are high functioning, there is less risk, but there is still a potential risk

3. What mitigating factors are present (population type)?

Look at the client population to see what the level of risk is. Whether based on their age or on their cognitive level, some activities that contain risk are acceptable.

Some activities present risk, yet prohibiting it may impinge upon the client's rights.

Example:

- It may be acceptable for some clients to walk or use public transportation to work/school each day. These risks at times are acceptable and would be tolerated in the interest of respecting the dignity of the client as they should be afforded choices based on their legal right and ability to make decisions.
- Generally facilities are not allowed to lock up food as it may deny clients their basic sustenance as well as impinge upon their personal rights. If the licensee locked up a client's food, a mitigating factor might be that the client has Prader Willi Syndrome (excessive, uncontrolled eating). Due to this client's dangerous behaviors and the health needs of the client, locking up the food may actually reduce a more serious risk and hence be appropriate, provided that the licensee adheres to all other nutrition related laws and regulations including food accessibility for the other clients.

If the facility is located on a busy street, there will be some risk attributed to the location. Some questions to ask when assessing this risk may include:

- Is this a risk that could be mitigated through maintenance (fencing), or increased supervision?
- Is the client population at greater risk due to their lack of impulse control or decision making ability?

These factors may also help in determining the plan for correcting the deficiency. Refer to EM section 3-3600, Plan of Correction.

COLLECTIVE EVALUATION PROCESS- EXPLAIN THE CITATION.

The effective use of the facility evaluation process requires the Licensing Program Analyst to be familiar with the facility's history, have an understanding of the characteristics and needs of the client population being served and be able to capture an overview of the conditions which affect the plan of operation. Collectively, this will provide the Licensing Program Analyst with the framework to understand how licensing regulations can be applied so as to temper enforcement with technical assistance and consultation and avoid citations that are trivial and insignificant to the health, safety, and personal rights of those in out-of-home care and the overall operation of the facility.

The Licensing Program Analyst must be able to justify his/her findings and the course of action provided to the licensee to ensure correction. If a statutory or regulatory requirement is specific, the written citation will identify the controlling statute or regulation, the deficiency observed and the location of the deficiency. When a statutory or regulatory requirement is not specific, the deficiency statement will require an explanation of the immediate or potential impact on clients and/or the facility plan of operation or how the specific statute or regulation was violated.

This explanation is critical when citing regulations that have language that is subject to many interpretations such as: "clean, safe sanitary and in good repair" or "safe, and healthful.

When citing regulations that are not specific, the Licensing Program Analyst must determine and analyze how or in what way a particular incident or condition will result in a negative impact to those in care. The responsibility for identifying the adverse impact to clients and providing justification to support the reason for a citation is on the Licensing Program Analyst. This information will enable the licensee to better understand a deficiency citation in terms of the nature of the problem, why it requires correction and what is needed to assure substantial compliance.