

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> 09RM-11</p> <hr/> <p><u>Date Issued</u> September 2009</p>
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Subject:

Reference Material
 Enforcement Actions
 Sections 1-0040 Civil Penalties, General Statement and 1-1180 Operations after Revocation

Reason for Change:

Revision to the Evaluator Manual was necessary to comply with Assembly Bill 978

Filing Instructions:

REMOVE – Pages 12, 96 and 97

INSERT – Pages 12, 96 and 97

Approved:

Original signed by Thomas Stahl

9/30/09

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 Date

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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 department 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.

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.
- Violations leading to death, injury, or sickness, see EM section 1-0070.

Other specific provisions for the imposition of civil penalties include the following:

For Foster Family Agencies, a civil penalty of \$50 per day for each instance may be assessed for:

- Failure to provide the department with a log of family homes certified and decertified as required [See H&S Code Section 1536, Regulations Section 88061(h)].

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

- Failure to comply with posting requirements

For all child day 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.

1-1170 DECISION AND OTHER POST-HEARING ISSUES (Continued) 1-1170

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 Section 1-1190, Facility Closures: Notification and Client Relocation.

The licensee must stop all operation when a license is revoked. The Licensing Program Analyst must conduct a follow-up visit 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 visit (such as a visit 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.

If it is found at the visit 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 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.

1-1180 OPERATION AFTER REVOCATION (Continued)**1-1180**

A record of licensing revocations is kept by the Department of Justice. This information is obtained from the 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 assure their health and safety, has an enormous impact on these clients, their families and authorized representatives, local protective agencies and the community as a whole. However, if a care provider is operating in a manner that places clients in imminent danger or subjects them to continual poor care, the Licensing Agency becomes responsible for taking action that may directly or indirectly result in facility closure.

Abrupt closures of care facilities have a dramatic impact on clients, family members, care providers, placement and protective agencies and on licensing staff. It is the policy of the Community Care Licensing Division that, in those cases where facility closure is identified as a possible outcome of any licensing action, clients and their relatives and authorized representatives will be provided as much advance notice as possible. In addition, it remains the policy of the Community Care Licensing Division that appropriate placement and protective agencies will be involved in the planning stages that precede any administrative actions taken that could result in facility closure.

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 of 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 trauma that is every bit as dangerous as the situation being remedied.

A. Development of Facility Closure Plan:

With the exception of situations where the first course of action is contacting emergency response personnel such as law enforcement, Adult Protective Services, or medical personnel, it is the Department's policy that no actions which result in the need for client relocation will be carried out unless and until a Facility Closure Plan has been developed. The plan will include advance notification to relatives and authorized representatives.