

EVALUATOR MANUAL TRANSMITTAL SHEET

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| <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> 11RM-01</p> <hr/> <p><u>Date Issued</u> July 2011</p> |
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Subject:

Reference Materials – Enforcement Sections: 1-0045, 1-0055, 1-0057, 1-0060, 1-0065, 1-0070, 1-0072, 1-0075 and 1-1455

Reason for Change:

Implementation of Assembly Bill 978 (Benoit), Chapter 291, Statutes of 2008. Updating of all civil penalty sections

Filing Instructions:

REMOVE – pages 1, 2, 11, 12, 13, 14, 14.1, 14.2, 14.3, 15, 16, 17, 17.1, 17.2, 18, 19, 20, 20.1, 21, 21.1 and 168.1

INSERT – pages 1, 2, 11, 12, 13, 14, 14.1, 14.2, 14.3, 15, 16, 17, 17.1, 17.2, 17.3, 17.4, 17.5, 17.6, 18, 18.1, 19, 20, 20.1, 21, 21.1, 21.2 and 168.1

Approved:

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7/6/11

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Date

| | |
|--|---------------|
| 1-0000 ENFORCEMENT ACTIONS | 1-0000 |
| General Statement..... | 1-0010 |
| Licensing Responsibilities Performed by Counties | 1-0020 |
| Glossary | 1-0030 |
| CIVIL PENALTIES, GENERAL STATEMENT | 1-0040 |
| Violations Resulting in Assessment of Civil Penalties..... | 1-0045 |
| Unlicensed Facility Operation | 1-0050 |
| Background Check Violations | 1-0055 |
| Parents Rights Addendum Violations Family Child Care Homes only..... | 1-0057 |
| Civil Penalties Assessed for Failure to Meet Plan of Correction Due Date | 1-0060 |
| Civil Penalties for Repeat Violations..... | 1-0065 |
| Violations Warranting An Immediate Civil Penalty Assessment Of \$150 Per Day Per Violation | 1-0070 |
| Additional Civil Penalty Assessments | 1-0072 |
| Quick Reference – Civil Penalties | 1-0075 |
| NON-COMPLIANCE WITH THE LICENSING LAWS AND REGULATIONS | 1-0100 |
| Case Assessment..... | 1-0110 |
| Facility Compliance Plan..... | 1-0200 |
| Non-Compliance Conference..... | 1-0300 |
| Documenting the Non-Compliance Conference..... | 1-0310 |
| Documentation Requirements for Child Care Facilities..... | 1-0311 |
| Sample Non-Compliance Conference Letter Language | 1-0315 |
| Compliance Plan Conference Criteria | 1-0320 |
| Sample of Compliance Plan Conference Letter Language..... | 1-0325 |
| Compliance Plan Conference Office Procedures..... | 1-0330 |
| Letter Language to Schedule a Compliance Plan Meeting..... | 1-0335 |
| SUPPORT UNITS | 1-0400 |
| TECHNICAL SUPPORT PROGRAM (Repealed 11/07)..... | 1-0500 |
| INVESTIGATIONS BRANCH..... | 1-0600 |
| Investigative Services | 1-0610 |
| Investigative Priorities | 1-0620 |
| Case Acceptance | 1-0630 |
| Unlicensed Facility Complaint Investigations | 1-0640 |
| Case Referrals from Outside Sources | 1-0650 |
| Investigations Branch Model (Repealed 11/09) | 1-0660 |
| CENTRAL OPERATIONS BRANCH, AUDIT SECTION | 1-0700 |
| Audit Services..... | 1-0710 |
| Description of Audit Services..... | 1-0720 |
| Requesting Audit Services..... | 1-0730 |
| Priority Criteria for Audits..... | 1-0740 |
| Case Acceptance and Handling | 1-0750 |
| Trust Audits | 1-0760 |
| Conveyance of Audit Findings via an Audit Report (Repealed 7/00)..... | 1-0762 |
| Conveyance of Audit Findings via the LIC 809 Process (Repealed 7/00)..... | 1-0764 |
| Corrective Action Accompanying Audit Findings (Repealed 7/00)..... | 1-0766 |

1-0000 ENFORCEMENT ACTIONS (Continued) 1-0000

Appeal Process for Trust Audit Findings (Repealed 7/00).....1-0768
 Solvency Audits.....1-0770
 Conveyance of Audit Findings1-0780
 Corrective Action Associated with Audit Findings1-0790

ADMINISTRATIVE ACTIONS OR OTHER LEGAL ACTIONS.....1-1000
 Administrative Action and other Legal Options.....1-1010
 Evidence and Documentation1-1020
 Evidence and Documentation Sample Declarations1-1025
 The Statement of Facts.....1-1100
 Preparation of the Statement of Facts Package.....1-1130

Routing the Statement of Facts Package.....1-1140
 After the Statement of Facts Reaches Legal1-1150
 Settlements, Stipulations, Probation1-1160
 Decision and other Post-Hearing Issues1-1170
 Operation after Revocation1-1180
 Facility Closures, Notification and Client Relocation1-1190
 Facility Closure Plan Guidelines1-1195
 Out-of-State Administrative Action Notification1-1196
 Intra-Agency Administrative Action Notice.....1-1197

TEMPORARY SUSPENSION ORDERS1-1200
 Necessity for a Temporary Suspension Order1-1205
 Telephone Temporary Suspension Orders.....1-1210
 Temporary Suspension Order Process1-1211
 Temporary Suspension Order Interim Hearings for Community Care
 Facilities.....1-1215
 Temporary Suspension Order Effective Date1-1220
 Serving Temporary Suspension Orders Under Special Circumstances
 (Repealed April 2000).....1-1225
 Planning Procedures Prior to a Temporary Suspension Order1-1235
 Temporary Suspension Order Master Kit.....1-1240
 Agency Resource List.....1-1245
 Obtaining a Client Census Prior to a Temporary Suspension Order1-1255
 Coordination with Placement Agencies.....1-1260
 Temporary Suspension Order Team1-1265
 Temporary Suspension Order Service Procedures1-1270

**LEGAL DIVISION PROCEDURES FOR TEMPORARY SUSPENSION ORDERS
 AND UNLICENSED OPERATIONS.....1-1290**

EXPEDITED ACCUSATION.....1-1300

1-0030 GLOSSARY (Continued)

1-0030

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.

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 a temporary suspension order from going into effect. This is the only connection between a temporary suspension order 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 order 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 order.

Unlicensed Facility: A facility shall be deemed to be an unlicensed community care facility, residential care facilities for the elderly, residential care facilities 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, Sections 80001 community care facility, 87801 residential care facility for the chronically ill, 87101 residential care facility for the elderly, or Section 102352 family child care home.
- 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 chronically ill, residential care facility for the elderly, or community care facility.

1-0040 CIVIL PENALTIES, GENERAL STATEMENT

1-0040

The assessment of civil penalties is one method, in addition to the penalties of

1-0040 CIVIL PENALTIES, GENERAL STATEMENT (continued)**1-0040**

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 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-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 dependant 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 Center 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

H&S 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

EVALUATOR MANUAL
ENFORCEMENT ACTIONS

1-0065 CIVIL PENALTIES FOR REPEAT VIOLATIONS (Continued)

1-0065

violation continues until the deficiency is corrected.

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 1-0070
ASSESSMENT OF \$150 PER DAY PER VIOLATION (continued)

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 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 immediate 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).)

TABLE 1: FAILURE TO MEET POC OR REPEAT VIOLATIONS

| | Failure to Meet POC Date For Deficiencies³ (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.

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).

TABLE 3: UNLICENSED FACILITY

| Type of Facility | Unlicensed Facility Operation <small>(Use LIC 421A)</small> |
|--|---|
| 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: <ul style="list-style-type: none"> • 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 15 th 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: <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • Assess a penalty of \$200 per day until a completed application is submitted or operation ceases. |

TABLE 4: BACKGROUND CHECK VIOLATIONS

| <p>Type of Facility</p> | <p>Background Check Violations¹ (Use LIC 421B)</p> <ul style="list-style-type: none"> • 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) |
|---|--|
| <p>All Residential Care Facilities Including Foster Family Agencies, Excluding Certified Family Homes²</p> | <p>\$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</p> |
| <p>Child Care Facilities</p> | <p>\$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</p> |

^{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).

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) <ul style="list-style-type: none"> • 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 |

1-1455 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 **EM** Sections 1-1205 and 1-1210.)

NOTE: Refer to EM 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 **EM** Sections 1-1205 and 1-1210) or revocation (See **EM** Section 1-1010.) Additionally, if the individual has a denied exemption, cite and assess an immediate civil penalty.