
EVALUATOR MANUAL TRANSMITTAL SHEET

<p><u>Distribution:</u></p> <p> <input type="checkbox"/> All Child Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Residential Care Evaluator Manual Holders <input type="checkbox"/> All Evaluator Manual Holders </p>	<p><u>Transmittal No.</u></p> <p>15RCFE-01</p> <hr/> <p><u>Date Issued</u></p> <p>November 2015</p>
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Subject:

RESIDENTIAL CARE FACILITIES FOR THE ELDERLY
Regulation Interpretations and Procedures
Section 87106 – Operation Without a License

Reason for Change:

Revision to Section 87106 – Operation Without a License

Filing Instructions:

REMOVE: pages 3 through 8

INSERT: pages 3 through 8

Approved:

Signed by Lori Starnes

11/17/2015

LORI STARNES, Chief
Policy, Training and Certification Branch
Community Care Licensing Division

Date

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ARTICLE 2. LICENSE**87106 OPERATION WITHOUT A LICENSE****87106****(b) PROCEDURE**

If information is received regarding the operation of an unlicensed facility, it should be treated as, and given priority as, a complaint. (Refer to Reference Material Section 3-2010.)

If entry cannot be gained into the facility to conduct a site visit, contact the appropriate program investigation section if (1) reasonable attempts have been made to gain access and (2) there is reason to believe that the facility is operating without a license (e.g., interviews with neighbors, etc.). See Reference Material Section 1-0600.

In order to determine if a license is necessary, the review tool may be used during the site visit to assess what the operator has agreed to provide in the living arrangement. There may be instances where sufficient evidence exists to substantiate an unlicensed operation complaint against the operator without the use of this review tool or with partial completion of the review tool. Information used to determine the scores used in the review tool can come from several sources including, but not limited to:

1. Observations and interviews with individuals residing at the location;
2. Interviews with the operator;
3. Information received from other sources such as hospice agency, home health agency, discharge planner, placement agency, social worker or the local ombudsman office.

The Regional Office consulting enforcement attorney should be assisting every step of the way with these fact intensive decisions, and in all situations, the Regional Manager and/or Licensing Program Manager must be consulted before making a decision.

Upon final review of the data collected, if it is determined that care and supervision is provided and meets administrative or evidentiary standard, the issuance of a citation for 'unlicensed operation' followed by issuance of a Notice of Operation in Violation of Law will occur.

If care and supervision are not being provided, and it does not appear that any of the residents need care and supervision, notify the operator via the Complaint Investigation Report (LIC 9099) and notify the complainant(s), if applicable, via the Complainant Response (LIC 856). A copy of these notices should be kept in Community Care Licensing Division files.

87106 OPERATION WITHOUT A LICENSE (Continued)

87106

(c)

POLICY

The In-Home Supportive Services Program provides assistance to eligible aged, blind and disabled Medi-Cal eligible persons to allow them to live independently and avoid institutionalization by providing proper supportive services. Supportive services provided by the In-Home Supportive Services program include domestic and related services such as preparation and cleanup of meals, routine laundry, shopping for food and errands; heavy cleaning; personal care services such as bowel and bladder care, dressing, bathing, oral hygiene, and grooming; accompaniment by a provider during travel to health-related appointments or to alternative resource sites; yard hazard abatement; protective supervision; teaching and demonstration; and paramedical services. In-Home Supportive Services recipients are generally considered to be their provider's employer and are responsible for hiring, supervising, and firing their provider(s).

Due to the similarities between supportive services provided by the In-Home Supportive Services program and the types of care and supervision often provided by facilities, some In-Home Supportive Services living arrangements may appear to fall under the jurisdiction of the Community Care Licensing Division. This is particularly true in congregate living arrangements for the elderly and/or persons with disabilities wherein an In-Home Supportive Services provider lives and/or provides In-Home Supportive Services in the home. Not all congregate living arrangements require licensure, however. Health and Safety Code Section 1569.145(d) provides language exempting certain situations from Community Care Licensing Division licensing requirements.

A license is required in a home or congregate living arrangement wherein the facility operator or his or her employee (in-home supportive services worker) provides care and supervision to one or more elderly, blind or disabled persons under the guise of providing in-home supportive services.

If all residents in a living arrangement exclusively receive supportive services through the In-Home Supportive Services program, either through the same or different providers, licensure is not required. All other living arrangements where care and supervision is provided will need to be assessed on a case-by-case basis. This includes living arrangements where some residents receive supportive services through the In-Home Supportive Services program and some residents receive care and supervision through another provider relationship.

The Department's In-Home Supportive Services Program staff recognize that a home or congregate living situation in which in-home supportive services is being provided may not always be appropriate if all residents are not receiving care and supervision through the In-Home Supportive Services Program. Therefore, they advise the County In-Home Supportive Services Program that this type of living arrangement should be assessed and reported to the Community Care Licensing Division if it is believed that the operation needs to be licensed.

87106 OPERATION WITHOUT A LICENSE (Continued)**87106****PROCEDURE**

When all residents in a congregate living arrangement receive In-Home Supportive Services from the same or different providers, licensure is not required. All other living arrangements need to be assessed on a case-by-case basis.

(f)(2)

POLICY

Health and Safety Code Section 1569.44(c) was amended to incorporate the following language:

- (c) Upon discovery of an unlicensed residential care facility for the elderly, the Department shall refer residents to the appropriate placement or adult protective services agency or the appropriate local or State Long-Term Care Ombudsman if either of the following conditions exist:
 - (1) There is an immediate threat to the clients' health and safety.
 - (2) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

When notifying responsible persons or agencies, mail notices no later than one working day after the site visit has been conducted.

If there are any immediate health and safety risks (e.g., abuse, neglect or exploitation, serious physical plant deficiencies, etc.), telephone the appropriate County Adult Protective Services Agency, local law enforcement or the State Long-Term Care Ombudsman so that immediate action to investigate the situation and to protect residents (such as relocation) can be initiated. Follow up such notifications in writing.

Discuss with the licensing supervisor the need to refer any cases to the appropriate program investigation section.

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87107 EXEMPTION FROM LICENSURE**87107**

(a)(3)

POLICY

Facilities determined by the Community Care Licensing Division to be providing nonmedical care and supervision are not exempt from licensure under Health and Safety Code Section 1569.145(c). These facilities are subject to licensure as a residential care facility for the elderly. The law does exempt church-conducted facilities that depend on prayer or other spiritual means for healing. However, this exemption is limited to facilities that substitute prayer for medical/nursing services that would otherwise be provided for, or required by, residents in a health facility such as a nursing home or hospital as defined in Health and Safety Code Sections 1200 or 1250.

PROCEDURE

When a facility claims to be exempt from licensure, the Community Care Licensing Division will determine if the exemption is valid. To make this determination, licensing staff will:

1. Make an on-site inspection to evaluate the type and extent of **care** and **supervision** being provided to persons residing in the facility.
2. Contact the appropriate California Department of **Public Health, Licensing and Certification** when it appears that medical care is required (though not provided) and ask that agency to determine if the facility is exempt from licensure as a health facility as defined by the Health and Safety Code. Community Care Licensing Division staff may arrange joint visits with California Department of Health Services licensing staff to evaluate the facility.
3. Advise the facility operator(s)/administrator(s) that they are required to have a license as a residential care facility for the elderly when it is determined that care and supervision are needed and are being provided and/or medical care is not needed and is not being provided. Give the operator(s) and/or administrator(s) an opportunity to file an application for a license.