
EVALUATOR MANUAL TRANSMITTAL SHEET

<p><u>Distribution:</u></p> <p>_____ All Child Care Evaluator Manual Holders</p> <p>_____ All Residential Care Evaluator Manual Holders</p> <p><u>X</u> All Evaluator Manual Holders</p>	<p><u>Transmittal No.</u></p> <p>15RM-01</p> <hr/> <p><u>Date Issued</u></p> <p>August 2015</p>
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Subject:

Reference Material - Office Functions 2-5800 Guidelines for Use of Video Surveillance.

Reason for Change:

These guidelines for the use of video surveillance in adult community care facilities and residential facilities for the elderly are necessary to ensure that any video surveillance in common and private areas of a facility does not violate the personal rights or dignity of residents.

Filing Instructions:

REMOVE: pages 20 and 21

INSERT: pages 20 through 21 (*includes 20.1-20.11*)

Approved:

ORIGINAL DOCUMENT SIGNED BY
Brenda Barner for Lori Starnes

LORI STARNES, Branch Chief
 Technical Assistance and Policy Branch
 Community Care Licensing Division

 8/6/2015

 Date

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2-5700 RE-EVALUATION OF WAIVER/EXCEPTION**2-5700**

Licensing Program Analysts should review waiver(s)/exception(s) prior to annual inspection or as often as necessary to insure that safe and adequate care is provided to client(s)/resident(s).

During the site visit, document on the Licensing Report (LIC 809) whether the conditions of the waiver/exception request have or have not been met. Depending upon the re-evaluation, the waiver/exception may be extended or terminated. If no significant changes have occurred in the circumstances or conditions of the currently approved waiver/exception, indicate this on the LIC 809. If the waiver/exception will be extended, the extension date shall be specified on the LIC 809. In most cases it should not be necessary to issue a new waiver/exception form but if circumstances have changed or if additional conditions should be imposed it may be necessary to complete a new document.

2-5800 GUIDELINES FOR USE OF VIDEO SURVEILLANCE**2-5800**

Use of video surveillance in adult community care facilities and residential facilities for the elderly is not directly addressed in Title 22 regulations. However, clients maintain privacy and dignity rights that can be violated by negligent and/or abusive surveillance practices. The following guidelines are provided to help ensure that any video surveillance in common and private areas does not violate the personal rights of clients. Under no circumstances may video surveillance in facilities use an audio component.

A Licensee that has been using video surveillance prior to 2015 must contact his or her Licensing Program Analyst to develop a plan that brings the facility into compliance with the guidelines established in this policy for the use of video surveillance.

GUIDELINES

There are specific components that should be completed by the licensee and submitted to the Department. The components are as follows:

- **Waiver Request**
 - A waiver of the right to privacy is not required for common areas that are readily viewable and accessible by the public (e.g. on a driveway clearly open to public viewing or an entrance or exit that is publicly accessible).
 - A waiver is required for private areas of a facility.
 - All relevant Title 22 regulations to be waived are listed on the request.
 - The potential regulations that the licensee might request to be waived are provided, below, in **Table 1A (General Licensing), Table 1B (Adult Day Programs), Table 1C (Residential Facilities for the Elderly) and Table 1D (Residential Care Facilities for the Chronically Ill).**

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- Note: For each regulation waived, the licensee must be clear the waiver is strictly related to the video surveillance, (i.e. a resident does not waive his/her right to other aspects of the regulation). *For example, a waiver of Title 22, Section 87468(a)(1) does not mean the resident is waiving his/her right to dignity in relations with staff, etc. The waiver request would provide explanation of how the waived regulations are limited to the use of video surveillance and the resident would only be waiving his/her right to privacy based on the specified use and purposes of video surveillance as defined in the updated Plan of Operation with a documented statement of informed consent.*
- The following are the applicable Waiver and Exceptions regulations in the California Code of Regulations, Title 22:
 - 80024 Waivers and Exceptions - General Licensing regulations (Adult Residential Facilities, Adult Residential Facilities for Persons with Special Health Care Needs and Social Rehabilitation Facilities)
 - 82024 Waivers and Exceptions - Adult Day Program regulations
 - 87209 Program Flexibility - Residential Care Facilities for the Elderly regulations
 - 87824 Waivers and Exceptions - Residential Care Facilities for the Chronically Ill regulations
- Updated Plan of Operation
 - Licensee must submit an updated Plan of Operation.
 - **Table 2** provides a general outline for how a Licensee may update their Plan of Operation.
 - Licensee must be in compliance with applicable Title 22 regulations, as specified in the following Sections:
 - 80022 Plan of Operation - General Licensing regulations (Adult Residential Facilities, Adult Residential Facility for Persons with Special Health Care Need and Social Rehabilitation Facilities). In addition to Section 80022, the following shall apply:
 - 81022 Plan of Operation - Social Rehabilitation Facilities regulations
 - 85022 Plan of Operation - Adult Residential Facilities regulations
 - 82022 Plan of Operation - Adult Day Program regulations
 - 87209 Program Flexibility - Residential Care Facilities for the Elderly regulations
 - 87822 Plan of Operation - Residential Care Facilities for the Chronically Ill regulations
- Updated Admission Agreement and Informed Consent
 - The California Department of Social Services (CDSS) shall apply the following definition of “informed consent” when reviewing a facility’s process for obtaining signed informed consent from potential residents or existing residents or the legally authorize representative as necessary:
 - “Informed Consent” is a person’s agreement [or that of their legally authorized representative] to allow something to happen, made with full knowledge of the risks involved and the alternatives. *(Source: Garner, Bryan, editor. Black’s Law Dictionary, 4th Pocket Ed. West Group Publishing, St. Paul, Minn, 2011, p. 149)*

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- “Full knowledge”, also known as “knowingly” means, 1. having or showing awareness or understanding; well-informed 2. Deliberate; conscious. (*Source: Garner, Bryan, editor. Black’s Law Dictionary, 4th Pocket Ed. West Group Publishing, St. Paul, Minn, 2011, p. 429*)
- An updated Admission Agreement with informed consent, specific to the facility’s use of video surveillance and specific to the area(s) under video surveillance, shall be signed by the resident or the resident’s legally authorized representative, if applicable.
 - In the event a legally authorized representative signs the statement, the licensee must first obtain documented proof the authorized representative has legal authority to make the decision on behalf of the resident. The documentation must be maintained in the resident’s record.
 - A clause, within the updated Admission Agreement, that states how the licensee must turn off the video surveillance in private areas, if a resident does not provide consent or if a resident revokes consent.
- **Potential Resident with Existing Video Surveillance Service**

In the event a licensee already has video surveillance, and the licensee chooses to continue the use of surveillance, a potential resident or his/her legally authorized representative, as appropriate, would need to sign the admission agreement that describes the full scope of the services available at the facility. This policy for video surveillance and the admission agreement required for a potential resident defers to the potential resident or his/her legally authorized representative, as appropriate, to decide whether the resident will reside in the facility that offers video surveillance. If the licensee intends to use surveillance in the common areas the applicant would be required to sign the admission agreement, consenting to the use of video surveillance in the common areas, to be admitted. The licensee would be required to turn off the video surveillance in the applicable private areas if a potential resident does not want this service provided in the applicable private areas.
- **Existing Resident Revokes Signed Informed Consent**

In the event an existing resident revokes his/her informed consent verbally or in writing, the licensee would be required to shut off the video surveillance in the applicable private areas for that resident (e.g. the private studio the potential resident would reside in, bedrooms or bathrooms). The video surveillance in the common areas may remain on. The best practices addressed in this policy provide a recommendation for what the licensee should do when a resident verbally revokes their consent. This policy also defers to the resident or his/her legally authorized representative, as appropriate, to decide whether the resident will choose to continue to reside in the facility that offers video surveillance.
- **Video Surveillance Records** (i.e., a physical recording or a transmission of images)
 - In the event that a Licensee maintains video surveillance records, the Department recommends that the Licensee specify how they will maintain the video surveillance records in their Plan of Operation. The following best practices are recommended:
 - **Storing Recordings in Resident Records**

This policy recommends the recordings be maintained as part of the resident records.

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In event the recordings are maintained in the resident records, the applicable regulations shall apply.

- Only those with the legal authority to view resident records may view saved recordings.
- If more than one person is recorded and the licensee is not able to redact the images of any resident in the recording to protect their confidentiality then only Licensing Program Analysts and persons authorized by law to view all of the residents on the video may view these recordings upon request.

- *Storing Recordings Elsewhere (not in resident records)*

The licensee is not required to make the recordings part of the resident records. If the recordings are stored outside of the resident records the licensee shall comply with all of the following:

- Confidentiality laws;
- Allowing Licensing Program Analysts access to the video recordings upon request;
- Allowing access to the recordings only to other persons or entities authorized by law.

- Facility personnel must be sufficient in numbers to meet the residents' needs - video surveillance does not substitute for adequate staffing per Title 22, as specified in the following Sections:
 - 80065 Personnel Requirements - General Licensing regulations (Adult Residential Facilities, Adult Residential Facilities for Persons with Special Health Care Needs and Social Rehabilitation Facilities). In addition to Section 80065, the following shall apply:
 - 81065 Personnel Requirements - Social Rehabilitation Facilities regulations
 - 85065 Personnel Requirements - Adult Residential Facilities regulations
 - 82065 Personnel Requirements - Adult Day Program regulations
 - 87411 Personnel Requirements - General - Residential Care Facilities for the Elderly regulations
 - 87865 Personnel Requirements - Residential Care Facilities for the Chronically Ill regulations

2-5800 GUIDELINES FOR USE OF VIDEO SURVEILLANCE (Continued) 2-5800**TABLE 1A: General Licensing Regulations (Adult Residential Facilities, Adult Residential Facilities for Persons with Special Health Care Needs and Social Rehabilitation Facilities)**

If the licensee requests a waiver to use video surveillance in the private areas of the facility, the following regulation sections may be included in the waiver request along with an updated Plan of Operation:

TABLE 1A General Licensing Regulations (Adult Residential Facilities, Adult Residential Facility for Persons with Special Health Care Need and Social Rehabilitation Facilities)	
Regulation Section	Section Title
<i>Dignity in relationships with staff and others</i>	
80072(a)(1)	Personal Rights
<i>Right to privacy in accommodations</i>	
80072(a)(2)	Personal Rights
80075(d)	Health-Related Services
80077.4(b)(7)	Care for Clients with Incontinence
81088(b)(4) <i>Social Rehabilitation Facilities only</i>	Fixtures, Furniture, Equipment and Supplies
85088(b)(4) <i>Adult Residential Facilities only</i>	Fixtures, Furniture, Equipment and Supplies
<i>Resident records are to be confidential</i>	
80070(c)	Client Records
80071(a)(2)	Register of Clients
<i>Right to have private visits</i>	
81072(b)(4) <i>Social Rehabilitation Facilities only</i>	Personal Rights
81072(b)(9) <i>Social Rehabilitation Facilities only</i>	Personal Rights
85087(d) <i>Adult Residential Facilities only</i>	Buildings and Grounds
85072(b)(4) <i>Adult Residential Facilities only</i>	Personal Rights
85072(b)(9) <i>Adult Residential Facilities only</i>	Personal Rights

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TABLE 1A (Continued) General Licensing Regulations (Adult Residential Facilities, Adult Residential Facility for Persons with Special Health Care Need and Social Rehabilitation Facilities)	
Regulation Section	Section Title
<i>Right to privacy when receiving medical treatment</i>	
85075(d) <i>Adult Residential Facilities only</i>	Health-Related Services
80092.4(a)(7) <i>Does not apply to Adult Residential Facility for Persons with Special Health Care Needs</i>	Colostomy/Ileostomy
80092.5(a)(5) <i>Does not apply to Adult Residential Facility for Persons with Special Health Care Needs</i>	Fecal Impact Removal, Enemas, or Suppositories
80092.6(a)(7) <i>Does not apply to Adult Residential Facility for Persons with Special Health Care Needs</i>	Indwelling Urinary Catheter/Catheter Procedure
80077.4(b)(7)	Care for Clients with Incontinence

Note: The CDSS will ensure that Title 22, Section 80044(b)(1) is preserved in every waiver request.

2-5800 GUIDELINES FOR USE OF VIDEO SURVEILLANCE (Continued) 2-5800**TABLE 1B: Adult Day Programs**

If the licensee requests a waiver to use video surveillance in the private areas of the facility, the following regulation sections may be included in the waiver request along with an updated Plan of Operation:

TABLE 1B Adult Day Programs	
Regulation Section	Section Title
<i>Dignity in relationships with staff and others</i>	
82072(a)(1)	Personal Rights
<i>Right to privacy in accommodations</i>	
82072(a)(2)	Personal Rights
82075(d)	Health-Related Services
82077.4(b)(7)	Care for Clients with Incontinence
<i>Resident records are to be confidential</i>	
82070(c)	Client Records
82071(b)(1)	Register of Clients
<i>Right to privacy when receiving medical treatment</i>	
82075(d)	Health-Related Services
82092.4(a)(7)	Colostomy/Ileostomy
82092.5(a)(5)	Fecal Impact Removal, Enemas, or Suppositories
82092.6(a)(7)	Indwelling Urinary Catheter/Catheter Procedure
82077.4(b)(7)	Care for Clients with Incontinence

Note: The CDSS will ensure that Title 22, Section 82044(b)(1) is preserved in every waiver request.

2-5800 GUIDELINES FOR USE OF VIDEO SURVEILLANCE (Continued) 2-5800**TABLE 1C: Residential Facilities for the Elderly**

If the licensee requests a waiver to use video surveillance in the private areas of the facility, the following regulation sections may be included in the waiver request along with an updated Plan of Operation:

TABLE 1C	
Residential Facilities for the Elderly	
Regulation Section	Section Title
<i>Dignity in relationships with staff and others</i>	
87468(a)(1)	Personal Rights
<i>Right to privacy in accommodations</i>	
87307(a)	Personal Accommodations and Services
87307(c)	Personal Accommodations and Services
<i>Resident records are to be confidential</i>	
87506(c)	Resident Records
87508(c)(1)	Register of Residents
<i>Right to have private visits</i>	
87308(b)	Resident and Support Services
87468(a)(11)	Personal Rights
87468(a)(14)	Personal Rights
<i>Right to privacy when receiving medical treatment</i>	
87465(a)(8)	Incidental Medical and Dental Care
87621(b)(3)	Colostomy/Ileostomy
87622(b)(2)	Fecal Impact Removal, Enemas, and/or Suppositories
87623(b)(4)	Indwelling Urinary Catheter
87625(b)(8)	Managed Incontinence
<i>Right to privacy in accommodations</i>	
87307(a)	Personal Accommodation and Services
87307(c)	Personal Accommodation and Services
87465(a)(8)	Incidental Medical and Dental Care
87625(b)(8)	Managed Incontinence

Note: The CDSS will ensure that Title 22, Section 87755(b) is preserved in every waiver request.

2-5800 GUIDELINES FOR USE OF VIDEO SURVEILLANCE (Continued) 2-5800**TABLE 1D: Residential Care Facilities for the Chronically III**

If the licensee requests a waiver to use video surveillance in the private areas of the facility, the following regulation sections may be included in the waiver request along with an updated Plan of Operation:

TABLE 1D	
Residential Care Facilities for the Chronically III	
Regulation Section	Section Title
<i>Dignity in relationships with staff and others</i>	
87872(a)(1)	Personal Rights
<i>Right to privacy in accommodations</i>	
87872(a)(2)	Personal Rights
87888(f)(4)	Fixtures, Furniture, Equipment and Supplies
<i>Resident records are to be confidential</i>	
87870(c)	Resident Records
87870(c)(1)	Resident Records
<i>Right to have private visits</i>	
87872(a)(11)	Personal Rights
<i>Right to privacy when receiving medical treatment</i>	
87898(b)(3)	Colostomy/Ileostomy
87899(b)(2)	Enema and/or Suppository and Fecal Impaction Removal
87900(b)(4)	Indwelling Urinary Catheter/Catheter Procedure/Intermittent Catheterization
87901(b)(2)	External Catheters
87902(b)(4)	Managed Bowel and/or Bladder Incontinence
<i>Right to privacy in accommodations</i>	
87872(a)(2)	Personal Rights
87888(f)(4)	Fixtures, Furniture, Equipment and Supplies

Note: The CDSS will ensure that Title 22, Section 87844(c)(1) is preserved in every waiver request.

2-5800 GUIDELINES FOR USE OF VIDEO SURVEILLANCE (Continued) 2-5800

TABLE 2: Plan of Operation updates specific to the use of video surveillance

In order to use video surveillance in a facility, the licensee would be required first submit an updated Plan of Operation that reflects the facility’s scope and use of the video surveillance. The following are recommended updates for the Plan of Operation:

Table 2 - Plan of Operation Recommended Updates	
Plan of Operation*	Recommended updates specific to the use of video surveillance
Statement of purpose and program goals	<p>Description and purpose of the use of the video surveillance in the facility and how residents’ privacy and confidentiality will be protected as it relates to the following:</p> <ul style="list-style-type: none"> • Private communication. • Designated private areas required by regulations. • When there is an expectation of privacy. • Handling of recordings (encrypted, password protection, storage system, retention schedule, destruction methods, etc.). • How the licensee will secure (e.g., encryptions, password protection, etc.) the Internet feed of resident images in the event the licensee allows for remote viewing of residents (e.g., to adult children monitoring their senior parent in a Residential Care Facility for the Elderly). • Explain that video surveillance equipment cannot have audio capability. • Specify steps taken to secure the system from unauthorized access.
Admission Agreement and signed informed consent	<ul style="list-style-type: none"> • Description of the scope and use of the video surveillance. • An explanation that states how the licensee must turn off the video surveillance in private areas, if a resident does not provide consent or if a resident revokes consent.

2-5800 GUIDELINES FOR USE OF VIDEO SURVEILLANCE (Continued) 2-5800

Table 2 - Plan of Operation Updates (Continued)	
Plan of Operation*	Updates specific to the use of video surveillance
Statement of admission policies and procedures regarding acceptance of persons for services	<ul style="list-style-type: none"> • Description of how video surveillance would not be utilized in any private area if the resident or resident’s legally authorized representative did not sign a statement of informed consent or revoked a signed statement of informed consent.
Plan for training staff	<ul style="list-style-type: none"> • Address training requirements for staff using the video surveillance equipment. • Address how staff will protect the privacy and confidentiality of residents.
Staffing plan	<ul style="list-style-type: none"> • Clarification that facility personnel must be sufficient in numbers to meet the residents’ needs - video surveillance does not substitute for adequate staffing.
Facility sketch	<ul style="list-style-type: none"> • Provide a description of the physical signs that will be posted in the areas that will be subject to video surveillance. • Sketch where each camera will be located and the area captured by each camera.
Statement of the facility’s policy for family visits and other communications with residents	<ul style="list-style-type: none"> • Description of the use of the video surveillance in the facility and how residents’ privacy and confidentiality will be protected.

*In the event anything specific to the use of video surveillance changes (e.g. video surveillance has been shut off in all of the private areas, or the video surveillance is no longer operable and in use, etc.), then the licensee must notify the licensing agency and update the existing waivers and Plan of Operation with the changes.

2-6000 PUBLIC, PERSONAL AND CONFIDENTIAL INFORMATION 2-6000

The Information Practices Act of 1977 and the California Public Records Act define the rights of citizens to have access to information collected, used, and maintained by virtually all State agencies. Additionally, State agencies are under strict rules regarding how public, personal, and confidential information can be collected, used, released, and retained.

The Public Records Act (Government Code, Section 6250-6265) states, “The Legislature, mindful of the rights of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the State.” The Act also requires departments to establish written guidelines for public accessibility to Department records (See Department of Social Services Administrative Manual 3-3000 to 3-4302). The Information Practices Act (Civil Code Section 1798 et. seq.) provides that individuals have the right to inquire and be notified if the Department maintains a file on them and to receive copies of such records if they so desire.

2-6000 PUBLIC, PERSONAL AND CONFIDENTIAL INFORMATION
(Continued)**2-6000**

Additionally, the Community Care Facilities Act (Health and Safety Code, Section 1500 et. seq.) requires that reports on the results of each (licensing) inspection, evaluation, or consultation regarding the facility shall be kept on file in the Department and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection.

All records in the facility files are considered public unless exempted in the Public Records Act or protected by confidentiality laws. All client confidential information shall be redacted prior to public review. There is no exemption in the Public Records Act for applications (even prior to licensure). However, personal information (such as education, financial, medical, driver's license numbers, social security numbers, date of birth, names of children living in the facility, etc.) in the applications would need to be redacted prior to release under the Public Records Act. Additionally, names, addresses and other identifying information contained in applications for foster family homes for 6 or fewer children and small family child care homes must be redacted. This restriction also applies to documents pertaining to certified family homes for 6 or fewer children.

Therefore, applications for these types of facilities do not need to be produced as the required redaction renders the application "meaningless."

The Department of Social Services Administrative Manual (Section 3-3010) requires each licensing office to post guidelines regarding access to public records. To comply with this mandate, each licensing agency must post Guidelines for Inspection of Public Records in a prominent place that is readily accessible to the public.

The Information Practices Act requires that (1) personal and confidential information be maintained only if necessary to accomplish the legally mandated purposes; (2) information should be requested directly from the individual rather than other sources; (3) individuals shall have a right to refuse to disclose information; (4) individuals shall have a right to request an amendment to personal records; (5) information shall be disclosed only under specific conditions; and (6) persons providing information to be notified where records where are kept and have access to the personal information.

As a result of a lawsuit filed against the California Department of Social Services by CBS Broadcasting Inc., and in accordance with the Court of Appeal of the State of California, Second Appellate District's decision filed August 21, 2001, the names of individuals with criminal record exemptions and the identification of the facility with which they are associated is considered public information. This information will be made available in response to a public record request, including a request to review the facility file.

2-6100 REQUEST TO REVIEW INFORMATION**2-6100**

When an interested individual requests information related to licensing standards regarding a community care facility in person, that individual may receive, for a reasonable charge the following:

1. One copy of the published regulations for each licensing category requested by the individual.
2. One copy of the civil penalty regulations for all requested categories except for exempted facilities.

If the interested individual contacts a licensing office by phone, mail or e-mail, the interested party shall be referred to the Community Care Licensing Division's internet Website to obtain the requested material (www.cclcd.ca.gov).

To receive information regarding deficiency notices, waivers, and/or exceptions issued to facilities which serve or may serve SSI recipients, an interested individual must request such information by specifying the name of the affected facility(ies). Additionally, the individual shall be given the opportunity to review the public file for each specified facility and receive the following free of charge:

One copy of each waiver or exception issued to that facility, if requested by the individual. If clients are named in these documents the name shall be blocked out before release to the public.