

# EVALUATOR MANUAL TRANSMITTAL SHEET

<b><u>Distribution:</u></b>  <input checked="" type="checkbox"/> All Child Care Evaluator Manual Holders <input type="checkbox"/> All Residential Care Evaluator Manual Holders <input type="checkbox"/> All Evaluator Manual Holders	<b><u>Transmittal No.</u></b> 05CCC-03
	<b><u>Date Issued</u></b> November 2005

**Subject:**

**CHILD CARE CENTER (Blues)**

**Reason For Change:**

Section 101173 – Plan of Operation

**Filing Instructions:**

REMOVE – pages 25 and 26

INSERT – pages 25 and 26

**Approved:**

*Linda Inglett for*

*11/18/05*

\_\_\_\_\_  
 MELISSA MILLER, Program Administrator  
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**CHILD CARE CENTERS**

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**SUBCHAPTER 3 – SCHOOL-AGE CHILD CARE CENTER**

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**CHAPTER 1 - CHILD CARE CENTER GENERAL LICENSING REQUIREMENTS**

**ARTICLE 1 GENERAL REQUIREMENTS AND DEFINITIONS**

**101151 GENERAL 101151**

**(a) POLICY**

Chapter 1 – Child Care Center General Licensing Requirements do not apply to Family Child Care Homes.

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**101152 DEFINITIONS 101152**

c. (2)(H) - Care and Supervision

**POLICY**

Facilities that provide care and supervision must be licensed. Care and supervision activities include all basic services that must be provided in order to obtain and maintain a license.

**PROCEDURE**

Refer to California Code of Regulations Sections 101152 b. (1), 101156, 101157 and 101219.

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c. (8) - Completed Application

**PROCEDURE**

Review Application Booklets for private Day Care Centers (LIC 281A) and for public agency Day Care Centers (LIC 120H) to ensure completeness. Refer to California Code of Regulations Section 101169 and Evaluator Manual Reference Material Section 3-0210.

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e. (5) - Exception

**PROCEDURE**

See Evaluator Manual Reference Material Section 2-5000 and California Code of Regulations Section 101175.

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**101152 DEFINITIONS (Continued)**

**101152**

e.(6) - Exemption

**PROCEDURE**

Refer to California Code of Regulations Section 101170. Also see Evaluator Manual Reference Material Sections 2-4400 to 2-4900.

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g.(1) - Guardian

**POLICY**

A guardian is also identified as a person who is exempt from licensure.

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n.(1) – Non-ambulatory

**POLICY**

In a child care environment, the State Fire Marshal considers physical disability—not the age of children—when determining ambulatory capacity. That is because sleeping facilities (excluding napping areas) are not provided in child care centers.

Accordingly, for fire clearance purposes, all children (including infants) are considered ambulatory unless they are diagnosed with physical disabilities.

Policy regarding bedridden children is as follows:

1. The Uniform Building Code, Section 403, defines a bedridden person as “a person confined to a bed, requiring assistance in turning or unable to independently transfer to and from bed, and unable to leave a building unassisted during emergency conditions.” This does not apply to infants ages 0 to 2 years of age.
2. Bedridden children shall be allowed in child care centers as long as the center does not provide medical care to the child. No bedridden child shall be admitted to a child care center unless the center has secured a bedridden fire clearance.

**PROCEDURE**

See California Code of Regulations Sections 101161 and 101171.

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**101152 DEFINITIONS (Continued)**

**101152**

u.(1) – Urgent Need

Refer to California Code of Regulations Section 101181.

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w.(1) – Waiver

Refer to California Code of Regulations Section 101175 and Evaluator Manual Reference Material Section 2-5000.

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## ARTICLE 2 LICENSING

101157

## OPERATION WITHOUT A LICENSE

101157

(a)

## POLICY

Public and private schools for grades kindergarten and above are exempt from licensure as child care centers. The primary service being offered to kindergarten children and above in such settings is education and not care and supervision. However, private schools must have a current affidavit on file with the California Department of Education, Private Schools Unit--and with the local County Office of Education--for kindergarten and/or above to qualify for this exemption.

It is clear from 2 court decisions--Linda S. McMahon v. The North Valley Baptist Church and Montessori Schoolhouse of Orange County, Inc., v. the California Department of Social Services--that pre-kindergarten, preschool and nursery school programs are not exempt from licensure as a child care center even if the programs are provided by a school. These programs are subject to licensure.

The Legislature did not intend to exclude from licensure facilities providing nonmedical care and supervision to pre-kindergarten, preschool, nursery school and school-age children simply on the grounds that the care and supervision are provided in the educational atmosphere of a school. The character of the service(s) offered and performed should be regarded as controlling, and the primary services offered to pre-kindergarten, preschool and nursery school children are care and supervision. The fact that some educational services are provided would not mean that such pre-kindergarten, preschool and nursery school programs would be exempt from licensure.

## PROCEDURE

If the facility is a public or private school, determine the age of the children being served and the services provided. If the children are 4 years, 9 months of age or older, and the public school operates a kindergarten and above program, then it is exempt from licensure. If a private school, verify with the local County Office of Education that the school has a current affidavit on file for kindergarten and/or above for educational purposes. These affidavits are to be filed annually. Then determine the age of the children being provided the educational service. If children are 4 years, 9 months of age or older and participating in an educational program for kindergarten and or/above, then the facility is exempt from licensure. If the above does not apply, then the facility is subject to licensure.

**NOTE:** The California Department of Education does not issue an affidavit for preschool, nursery school or pre-kindergarten programs. These applicants are referred to the Community Care Licensing Division for information on licensure for programs below the kindergarten level.

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**101157 OPERATION WITHOUT A LICENSE (Continued)**

**101157**

(b) **PROCEDURE**

Information received regarding the operation of an unlicensed facility shall be treated as, and given priority as, a complaint. (Refer to Reference Material Section 3-2000.)

A site visit shall be conducted to determine if care and supervision are being provided and, therefore, if the center needs to be licensed.

If the evaluator cannot gain entry to the facility to conduct the site visit, contact the Child Care Program Investigations if (1) reasonable attempts have been made to gain access and (2) it is reasonable to believe that care and supervision are being provided (based on interviews with neighbors, etc.).

If care and supervision are not being provided, notify the operator (by use of the Facility Evaluation Report, LIC 809) and, if applicable, the complainant(s) (by use of the Complaint Response, LIC 856) of that fact. A copy of these notices shall be placed in Community Care Licensing Division files.

Mail notices to responsible persons or agencies no later than one workday after the site visit has been conducted.

If there are any immediate health safety risks (e.g., abuse, neglect or exploitation; serious physical plant deficiencies, etc.), telephone the children’s authorized representatives and the appropriate county Protective Services Unit so that immediate action can be taken. Follow up such notifications in writing.

Regional Office evaluators should discuss with their Local Unit Manager the need to refer any cases to the Child Care Program Investigations.

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(c) **POLICY**

A Notice of Operation in Violation of Law (LIC 195) shall be issued when a facility is discovered to be operating without a license.

The LIC 195 shall be issued, **omitting the last paragraph**, when a facility is discovered to be operating under the following circumstances:

1. When an application has been filed but a license has not yet been approved.
2. When an initial application for a new license has been denied (regardless of whether or not the denial is appealed by the applicant).

**101157 OPERATION WITHOUT A LICENSE (Continued)****101157****(c) POLICY (Continued)**

When the Regional Office has been previously informed that a facility is operating without a license, take the LIC 195 (signed by the Regional Manager) to the site visit. If it is determined during the visit that the facility is providing care and supervision and is in fact operating unlicensed, issue the LIC 195. If the Regional Office has not been previously informed that a facility is operating without a license, the notice shall be mailed (certified mail return requested) or hand-delivered to the operator by no later than the following workday. If you are not returning to your office the day of the visit, call your office and make arrangements for the notice to be mailed within the specified time frame.

If the operator of the unlicensed facility has taken no immediate action and an application has not been filed within the time frame specified on the LIC 195, make a follow-up visit within 30 days of the initial visit. The purpose of this visit is to determine whether the facility is continuing to provide care and supervision. If that turns out to be the case, consult your Local Unit Manager about making a referral to the Child Care Program Investigations for appropriate enforcement action. (Refer to California Code of Regulations Section 101198 for information regarding unlicensed facility penalties.)

**POLICY**

Education Code Section 8262.5 - Allows the Superintendent of Public Instruction to issue a certificate of operation in contract transfer situations to California Department of Education-funded child care and development facilities when a certificate is necessary for continued operation and the receipt of state and federal child nutrition or child development funding. A completed license application must be submitted within 15 working days of the issuance of the certificate. The certificate of operation expires upon the issuance or denial of a license by the California Department of Social Services.

**PROCEDURE**

There are very few situations that require the Superintendent of Public Instruction to issue a certificate of operation. The certificates are generally issued to continue funding. Licensing staff are directed to honor these temporary certificates of operation and to allow the new contracting agency to submit an application for licensure to Community Care Licensing Division within 15 working days. If an application is not submitted within 15 days and the facility continues to operate, a Notice of Operation in Violation of Law (LIC 195) shall be issued. A copy of the notice shall also be sent to the California Department of Education, Child Development Division. (See a copy of the certificate of operation in Appendix Section D.)

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101158

## EXEMPTION FROM LICENSURE

101158

For information on the exemption from Title 22 licensure of preschool programs operated by school districts serving children with special needs, please see Issue 6 of the section on children with special needs under Evaluator Manual Section 101226 (Health-Related Services).

(a)

**POLICY**

The Indian Child Welfare Act of 1978 (Public Law 95608) requires that any facility located off an Indian reservation and providing out-of-home care and supervision be licensed as a community care or child care facility. This applies even if the facility is “licensed” by the Indian tribe or an Indian organization. Community Care Licensing Division has no jurisdiction over the licensure of out-of-home care facilities located on an Indian reservation.

The Indian Child Welfare Act requires that an Indian child be placed in a facility that:

1. Represents the least-restrictive setting;
2. Most nearly approximates a family; and
3. Meets the special needs of the child, if any exist.

Maximize program flexibility through waivers and exceptions to achieve licensure of a range of Indian facilities that substantially comply with licensing standards and do not present life-threatening health and safety risks. (Refer to Evaluator Manual Reference Material Section 2-5000.)

Facilities located on federal government property, including military bases, are exempt from licensure because state laws do not apply on most federal lands. This exemption also applies to facilities located on Indian reservations.

**PROCEDURE**

When facilities located on federal government properties or Indian reservations require and/or request licensure, an application for a license may be processed if the person in charge of operations on the property (e.g., the military base commander, the director, etc.)--or, in the case of Indian reservations, the Indian Tribal Council--agrees to cooperate with all licensing procedures and abide by licensing rules and regulations. This agreement must be obtained on the standard agreement form LIC 996 or LIC 996A, as appropriate.

Additionally, a written agreement from the applicant may be obtained and reflected on the standard applicant agreement form LIC 997 or LIC 997A, as appropriate. The agreements should be signed by the Regional Manager.

**101158 EXEMPTION FROM LICENSURE (Continued)****101158****(a) PROCEDURE (Continued)**

Upon completion of an agreement with an Indian Tribal Council, the Bureau of Indian Affairs should be notified. A copy of the agreement should be sent to:

U.S. Department of Interior  
Sacramento Area  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, California 95825  
Attention: Area Director

The following information is provided as a result of questions posed related to the use of the agreement forms and should clarify any immediate questions related to this process:

1. The LIC 997 or LIC 997A is to be completed in addition to the agreement with the federal entity or Indian Tribal Council (LIC 996 or 996A). This serves as a reminder to the licensee of his/her responsibilities for licensure.
2. The processing of administrative actions should be handled in the same manner as for any other facility. No special procedures are necessary or required. But if an administrative action is initiated, the federal or Indian entity should be informed immediately to elicit their cooperation.
3. This agreement does not limit the authority of federal personnel to investigate abuse complaints. Rather, this agreement provides assurances that licensing representatives are allowed to also conduct investigations when the complaint involves a licensed facility.
4. If a facility is issued an order for temporary suspension or revocation and the facility fails to cease operation, the federal entity must ensure that all operations cease immediately. If the federal entity fails to cooperate, the agreement can be terminated and the license deemed invalid.

If it is not clear whether a facility is exempt from licensure, discuss with your Local Unit Manager the need for a policy determination from the Advocacy and Policy Development Bureau.

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## 101158 EXEMPTION FROM LICENSURE (Continued)

101158

(a)(7)

**PROCEDURE**

This information is provided to help determine if a recreation program, day camp or organized camp is exempt from licensure as specified in Health and Safety Code Sections 1596.792 and 1596.793.

1. Does the facility provide care and supervision to children?

If no, not subject to licensure.

If yes, refer to #2.

Drop-in recreation programs for school-age children are exempt from licensing requirements because, as defined below, they do not provide child care.

A drop-in recreational program is in a physical location that children can enter and depart at will. Children are not required to formally sign in/out. But program staff may request children to sign in/out for purposes of accountability (e.g., membership, etc.). Children who participate in drop-in recreational programs do not require monitoring or supervision. Once at the facility children are not assigned specific activities or placed in a structured program. "Drop-in" children may freely choose among a number of recreational activities.

Although children in drop-in programs do not require care and supervision, staff are not prohibited from directing them in the proper and safe use of equipment; providing instruction such as how to kick a soccer ball or do a back flip without injury; and preventing unruly conduct such as fighting.

Transportation to or from the facility is not a factor in determining if the facility is a drop-in recreational program. Children may arrive at or depart from the facility on their own.

Children's authorized representatives must be clearly informed that children participating in the drop-in recreational program are not there to receive structured care and supervision. Authorized representatives must be informed that children have the right to come and go from the facility as they please--and that facility staff will not prevent children from leaving the facility at any time.

## 101158 EXEMPTION FROM LICENSURE (Continued)

101158

(a)(7)

## PROCEDURE (Continued)

All program descriptions and advertisements must clearly state that the facility provides drop-in recreational activities, that children have the right to come and go from the facility, and that facility staff will not prevent children from leaving the facility. Program descriptions and advertisements cannot state that the facility is providing child care.

As a condition for exemption, the facility must inform each child's authorized representative of the foregoing. The facility must also have a signed statement from each authorized representative indicating that he or she understands the conditions under which the facility operates, i.e., that the facility is not a licensed child care center. If the facility doesn't know who the authorized representatives are (for example, the facility doesn't obtain that information as part of its membership process), the facility doesn't need to obtain that documentation.

2. Does the facility claim exemption from licensure because it provides a recreation program?

If no, subject to licensure.

If yes, refer to #3.

3. Does the facility meet the exemption criteria for a public recreation program pursuant to Health and Safety Code Section 1596.792 as a public recreation program?

If no, refer to #4.

If yes, not subject to licensure.

Section 1596.792(g) of the Health and Safety Code states:

*Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:*

1. *The program is operated only during hours other than normal school hours for grades K-12, inclusive, in the public school district where the program is located, or operated only during periods when students in grades K-12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:*

(A) *For under 16 hours per week.*

(B) *For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.*

## 101158 EXEMPTION FROM LICENSURE (Continued)

101158

(a)(7)

## PROCEDURE (Continued)

*In determining “normal school hours” or periods when students are “normally not in session,” the State Department of Social Services shall, where appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.*

2. *The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:*
  - (A) *For under 16 hours per week.*
  - (B) *For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.*
3. *The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.*

In order to remain exempt, a program for children under the age of four years and nine months (preschoolers) may permit children to be enrolled in consecutive sessions throughout the year; however, the program cannot permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child. The facility must maintain enrollment records to ensure that no preschool-age child is enrolled in sessions for more than 12 hours per week. If any child exceeds 12 hours per week, the program is no longer exempt and must apply for licensure.

Consecutive, or “back-to-back” sessions--and/or a combination of sessions--are permitted for children over the age of four years and nine months (school-age children) in exempt programs; that is, programs that operate for less than 16 hours per week—or for more than 15 hours per week and are less than 12 weeks in duration.

4. Does the facility claim exemption pursuant to Health and Safety Code Section 1596.793 as a private recreation program?

If no, refer to #5.

If yes, not subject to licensure provided the criteria in Health and Safety Code Section 1596.792 are met.

The interpretation regarding the number of sessions or program activities stated in #3 above also applies to #4.

## 101158 EXEMPTION FROM LICENSURE (Continued)

101158

## (a)(7) PROCEDURE (Continued)

5. Does the facility claim exemption from licensure because it is an organized camp or a summer camp?

If no, see #6.

If yes, not subject to licensure.

“Organized camp” means a site with program and facilities established for the primary purposes of providing an outdoor group living experience with social, spiritual, educational or recreational objectives for five days or more during one or more seasons of the year. This includes programs that operate for short periods of time during the year, such as summer, school breaks, etc., in addition to those that operate year-round.

Health and Safety Code Section 18897 preempts organized camps from the California Child Day Care Act. By preempted, as supposed to exempted, we mean an organized camp does not meet the definition of a child care center and, therefore, does not fall within Community Care Licensing Division’s jurisdiction.

The following measurable items can be used to distinguish an “organized camp” from a child care center:

1. Camps that meet the definition of Health and Safety Code Section 18897.
2. Permanent site.
3. Organized mandatory program participation.
4. Majority of the daily activities are conducted outdoors.

True camp prototypes are those operated by YMCAs, YWCAs, Boy Scouts, Girl Scouts, Camp Fire, Salvation Army, etc.

Organized camps are often members of one of the following:

- American Camping Association
- Christian Camping International
- Western Association of Independent Camps
- Association of Environmental and Outdoor Education, Inc.

As specified in Title 17, Section 30703, camps that do not operate on a year-round basis must submit an annual written notice of intent to operate at least 30 days prior to operation. Camps operating year-round are only required to submit this “intent” letter at the time of initial start-up. The letter of intent is submitted to the local environmental health department. The local environmental health department will notify the State Fire Marshal of the camp’s intent to operate. A copy of the notification to the State Fire Marshal will be sent to the camp by the local health department.

## 101158 EXEMPTION FROM LICENSURE (Continued)

101158

(a)(7)

**PROCEDURE** (Continued)

To determine whether a facility is in fact an “organized camp,” and not merely calling itself a camp to circumvent licensing, request that the “camp” provide documented verification from its local environmental health department that it is an organized camp.

If the facility does not have documented verification but appears to be an organized camp based on the above measurable items, allow a reasonable length of time for the facility to obtain verification from its local environmental health department. If the facility fails to provide the required verification and otherwise meets the definition of a child care center, require the facility to apply for licensure. If the facility does not meet the definition of a child care center and appears to meet the definition of an organized camp, the licensing office should file a complaint with the local environmental health department as the facility may be operating illegally.

**NOTE:** If verification that the program is an organized camp is not provided for any reason, the program is required to apply for licensure as a child care center.

5. Does the program qualify for any of the above exemptions (# 3 through 5)?

If yes, not subject to licensure.

If no, the program is required to apply for licensure as a child care center.

6. Does the licensee operate licensed and exempt programs at the same site using the same building to house both programs? (Example: A private recreation program and a licensed child care center.) If so, please see the Evaluator Manual “blues” for School-Age Child Care Centers.
7. Does the licensee indicate he/she intends to operate an exempt program (summer camp) at the licensed child care site and close down the child care operation during the summer months?

If yes, the licensee shall do the following:

- (A) Surrender the license, which results in forfeiture of the license as provided in Health and Safety Code Section 1596.858;
- (B) Provide a statement listing the reason for the surrender; and
- (C) Reapply for a child care license prior to again operating a licensed child care center.
-

## 101161 LIMITATIONS ON CAPACITY AND AMBULATORY STATUS

101161

## (a) POLICY

If a licensed child care center (e.g., Head Start) wants to mainstream children with disabilities from a county-/school-operated program into the center, the center must include the mainstreamed children in its capacity. This would be an increase-in-capacity request and, as such, a new fire clearance would be needed, as well as compliance with all other requirements as set forth in Section 101185.

If children with disabilities **only “mainstream” during outdoor activities**, and there is adequate outdoor space for both groups (75 square feet per child), technically the center needs to include the children with disabilities in its capacity. However, in order to allow “mainstreaming” to occur without placing unnecessary requirements on the licensee (e.g., requiring increased indoor activity space when children with disabilities will not be using that space, etc.), the licensee may submit a plan to the Department that details its proposal for ensuring that health and safety standards are met (e.g., adequate space, supervision, etc.). The Department will review and approve these plans on a case-by-case basis.

Policy regarding bedridden children is as follows:

1. The Uniform Building Code, Section 403, defines a bedridden person as “a person confined to a bed, requiring assistance in turning or unable to independently transfer to and from bed, and unable to leave a building unassisted during emergency conditions.” This does not apply to infants ages 0 to 2 years of age.
2. Bedridden children shall be allowed in child care centers as long as the center does not provide medical care to the child. No bedridden child shall be admitted to a child care center unless the center has secured a bedridden fire clearance.

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**(b) POLICY**

The Department is authorized to make determinations as to the ambulatory status of children. (See Section 101152n.(1) and Health and Safety Code Section 13131.)

As required by Section 101220, the ambulatory status of children shall be recorded in their medical assessment. However, the Department may require a reassessment if it believes that the previous assessment of a child’s ambulatory status is incorrect or that the assessment does not reflect the current ambulatory status of the child.

To be considered ambulatory, a child must meet all of the following criteria:

1. The child is not dependent upon a mechanical aid such as a walker, crutches or wheelchair.
2. The child is able to respond both physically and mentally to an audible or visual signal or oral instruction and to evacuate the building unassisted in an emergency situation.

**101161 LIMITATIONS ON CAPACITY AND AMBULATORY STATUS 101161**  
(Continued)**(b) POLICY (Continued)**

3. The child is able to utilize all escape routes identified in the center's fire safety/evacuation plan. This includes doors, stairs and fire escapes.
4. The child is able to ambulate a reasonable distance in a brief period of time without the assistance of a mechanical aid.

If a child fails to meet **any** of the above criteria, he/she shall be considered non-ambulatory.

Infants are not subject to the above criteria because age is not considered when determining ambulatory status. Instead, physical disability is considered.

**PROCEDURE**

See Section 101152n.(1) and Section 101171.

If it is believed that a child is non-ambulatory and the child's current record reflects that the child is ambulatory, the licensee should request the licensee/director to secure from the child's physician a reassessment of the child's ambulatory status. In making this request, the evaluator should state in the Facility Evaluation Report (LIC 809) the reasons why he/she believes that the child may be non-ambulatory. This rationale shall be based on the criteria listed under the Policy section above.

If the reassessment indicates that a child is a non-ambulatory and the center does not have an appropriate fire clearance, the following steps shall be taken:

1. The Department shall develop a plan of correction to require the center to make arrangements to have the child relocated. If the center wants to continue to serve the non-ambulatory child, the plan of correction would require the center to immediately request an appropriate fire clearance through the Department.
2. Pending correction as specified in number one above, if the Department believes that allowing the child to remain in the center would present an immediate threat to his/her safety, the Department shall so notify the child's authorized representative and the State Fire Marshal. This notification shall be in writing. In consultation with the State Fire Marshal, the Department shall also take any other necessary administrative action (e.g., request a revocation and temporary suspension order).

## ARTICLE 3 APPLICATION PROCEDURES

## 101169 APPLICATION FOR LICENSE

101169

## (a) POLICY

This is to clarify the issue of whether management companies utilized by applicants/licensees to operate and manage facilities should be added to the license as co-licensees. If an applicant/licensee agrees to allow a management company to assume responsibility and control over any aspect of care and supervision in the operation or management of the center, the management company must appear on the license as a co-licensee.

## PROCEDURE

When a co-licensee situation exists, each of the entities is required to meet all applicable requirements that an individual/licensee must meet to obtain a license.

The relationship between an applicant/licensee and a management company is not considered a partnership, and Regional Office staff should not require that they demonstrate the legal relationship. The management company is normally an independent contractor. A copy of the contract between the licensee/applicant and the management company must be submitted with the application for licensure.

## (2) POLICY

A child care center may provide care for a small number of school-age children without requiring a separate school-age license. Usually, the school-age children in care are siblings of younger children or children from the immediate neighborhood. In these cases, no more than 12 school-age children may be in care in the child care center. In addition, the center must meet preschool standards for staff qualifications and ratios, and indoor and outdoor space. The plan of operation for the child care center should specify how privacy will be provided for school-age children using bathroom facilities, and for separating preschool and school-age children during activities which may be potentially dangerous to the younger children. If these conditions are met, no waiver is required to allow the child care center to include school-age children in their programs.

## (b) POLICY

Persons inquiring about licensure shall be advised that they must attend an orientation meeting (see Reference Material Section 3-0100).

The Application Booklet (LIC 281A) is distributed during Component 1 of the orientation session.

To initiate the application process, Section A of the LIC 281A must be properly completed and submitted as a total package to the Regional Office. Incomplete application packages (Section A) shall be returned. All documents in Section B must be submitted within 90 days of application acceptance or the application is subject to closure. Before making a licensing decision, information received regarding the applicant(s) shall be verified.

## ARTICLE 3 APPLICATION PROCEDURES (Continued)

## 101169 APPLICATION FOR LICENSE (Continued)

101169

## PROCEDURE

Refer to Section 101178.

When all required documents in Section A are received, review to assure that the documents are properly completed. If additional information or clarification is needed, contact the applicant by telephone or via a Notification of Incomplete Application (LIC 184). Record all telephone calls on the Contact Sheet (LIC 185) and keep the LIC 185 in the facility file. If a document must be returned to an applicant, keep a copy with a notation that the original was returned to the applicant for correction. If all material is complete, return the facility file to the clerk pending receipt of supportive documents in Section B.

(b)(2)

## POLICY

The Americans with Disabilities Act, which was signed into law on July 26, 1990, gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. The term "public accommodations" includes child care centers (child care centers and family child care homes).

Under the Americans with Disabilities Act, an individual (including a child) is considered "disabled" if he/she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment (meaning other people treat the individual as if he/she is disabled whether or not that is actually the case). The Americans with Disabilities Act also prohibits discrimination against an individual who is "associated" with an individual with a disability.

The Community Care Licensing Division is not responsible for enforcing the provisions of the Americans with Disabilities Act.

(b)(2)

## PROCEDURE

Because Community Care Licensing Division is not responsible for enforcing the Americans with Disabilities Act, evaluators should not give advice to licensees about their responsibilities under the Americans with Disabilities Act. But licensees should be encouraged to contact the Community Care Licensing Division under the following circumstances:

- If licensees believe that our regulations are an impediment to fulfilling their obligations under the Americans with Disabilities Act.

## ARTICLE 3 APPLICATION PROCEDURES (Continued)

## 101169 APPLICATION FOR LICENSE (Continued)

101169

## (b)(2) PROCEDURE (Continued)

- If licensees are asked to make a “reasonable accommodation” under the Americans with Disabilities Act. (This will give Community Care Licensing Division the opportunity to provide input before the parties negotiate a settlement that might not be considered appropriate by the Community Care Licensing Division or the State Fire Marshal. Involving Community Care Licensing Division early in the process will enable the Community Care Licensing Division to effectively raise such issues as the intent of the regulations.)

In addition, the Child Care Advocate will serve as the clearinghouse for child care issues related to the Americans with Disabilities Act. The Regional Offices can still raise questions with the Child Care Program Office, but the Regional Offices should in all cases make the Child Care Advocate in their area aware of the Americans with Disabilities Act issues. The expectation is that the Child Care Advocate will identify regional and/or statewide issues that may be presented to the Child Care Program Office in issue-memo format. The Child Care Program Office will assume responsibility for requesting legal opinions as necessary.

Individuals who wish to file a complaint under the Americans with Disabilities Act, or who wish to obtain further information, should be advised to contact the following agencies:

- The local office of the State Department of Fair Employment and Housing. The State Department of Fair Employment and Housing has a wealth of information and will coordinate with federal agencies as appropriate.
- For additional information, individuals should contact:

U.S. Department of Justice  
Civil Rights Division  
Office on the Americans  
with Disabilities Act  
P.O. Box 66118  
Washington, D.C. 20035-6118  
(202) 514-0301  
(202) 514-0383 TT/TDD  
(202) 514-6193 Electronic Bulletin Board

## (d)

**PROCEDURE**

Review the Administrative Organization (LIC 309). If the form lists persons who own more than 10 percent of stock (for corporations), verify that the information required by Section 101169(d)(9) has been obtained. Ensure that the chief executive officer’s fingerprints are obtained in accordance with Section 101170(a).

See Evaluator Manual Section 101185(a) “Policy” for forfeiture of a license.

## 101169 APPLICATION FOR LICENSE (Continued)

101169

(d)(3)

**POLICY**

If the property is not owned by the applicant/licensee, evidence of control of property (e.g., copy of lease or rental agreement) shall be submitted to the Department. This policy does not preclude the Department from also requiring copies of deeds when necessary to verify who has control of property. Such circumstances would include instances where there are multiple license applications for a single location, or where the Department obtains information that would cause the Department to suspect that the applicant does not have control over the property. Such information shall only be secured at the time of application, or when subsequent circumstances dictate that such proof of control is needed.

**PROCEDURE**

Applicants shall be informed by the Department at orientations, interviews, field visits, etc., of their responsibility to adhere to terms placed on deeds and rental and lease agreements. But the Department shall not be responsible for determining what the terms of such agreements should be and for ensuring that those terms are met.

(d)(10)

**POLICY**

The applicant shall disclose on the Applicant Information form (LIC 215) any:

1. Past or present beneficial ownership of 10 percent or more in any child care, community care or health care facility; or any past or present service as an administrator, director, general partner or corporate officer of any child care, community care or health facility.
  - a. "Beneficial ownership" is any form of ownership. This includes, but is not limited to, persons who are members of nonprofit corporations, stockholders, trustees, trustors, partners, etc.
2. Revocation or other disciplinary action taken or being taken against a license held or previously held by the entities described in Health and Safety Code Section 1596.95(d).
  - a. "Other Disciplinary Action" includes pending or sustained denial actions, Temporary Suspension Orders, pending revocations, injunctions and misdemeanor actions. This information is gathered for character reference purposes only and shall not be considered a reason to cease application review (Health and Safety Code Section 1596.851).
3. Health and Safety Code Section 1596.851 states that if an applicant indicates, or the Department determines, that the applicant previously was issued a child care, residential care facility for the elderly, community care or health facility license that was revoked within the preceding 2 years, the Department shall cease any further review of the application until 2 years have elapsed from the date of the revocation. Such cessation shall not constitute a denial of the application for purposes of Health and Safety Code Section 1596.879, or any other provisions of law.

**101169 APPLICATION FOR LICENSE (Continued)**

**101169**

(d)(10) **POLICY (Continued)**

- 4. If it is verified that a license has been revoked within the past 2 years, the Department will return the application to the applicant with the standard form letter. (See Appendix.)

**PROCEDURE**

Upon disclosure of such involvement, or of any revocation or disciplinary action, refer to the List of Administrative Actions to determine or verify that an administrative action was or is being taken.

For applicants who disclose administrative actions or involvement in a health facility, the Department shall contact the California Department of Health Services, Licensing and Certification Division, Office of Certification Section, (916) 324-0047 or Calnet 454-0047. This unit will be able to provide information regarding administrative actions against health facilities.

The List of Administrative Actions is provided as a monitoring tool and consists of all completed administrative actions that resulted in a finding of revocation. The report also provides a master list of sustained denial actions and completed Temporary Suspension Orders. There may also be revocation actions adopted by the Department after the date of a quarterly report. For further clarification on the disposition of a particular case, Regional Offices may contact the Office of the Chief Counsel.

(d)(14) **POLICY**

Persons required to submit a fingerprint card as part of the process of obtaining a child care center license must also complete a Child Abuse Index Check (LIC 198A). Both the fingerprint card and the LIC 198A should be submitted to the Department. These documents are to be cleared prior to the issuance of a license.

**101170 CRIMINAL RECORD CLEARANCE**

**101170**

(a) **POLICY**

For information on fingerprint requirements for professionals who are employed by a school district (such as speech therapists) and who work alone with children with special needs, please see Issue Nos. 7 and 9 of the section on children with special needs in Evaluator Manual Section 101226 (Health-Related Services). This information also pertains to other employees of a school district.

When the applicant is a corporation, etc., the chief executive officer or other person serving in like capacity must be fingerprinted. "Other person serving in like capacity" means the person who has the same responsibility as the chief executive officer but who uses another title such as chairman of the board, president, etc.

Direct on-site supervision shall be defined as supervision of an employee or volunteer by an immediate supervisor who is on the center premises where children are provided care.

**101170 CRIMINAL RECORD CLEARANCE (Continued)**

**101170**

**(a) POLICY (Continued)**

At the time of application, licensure or change in personnel, licensees shall submit a list of facility position titles with brief job descriptions that include duties performed and the degree of care and supervision, if any, provided to children. The list shall also include the lines of supervision for staff and volunteers and shall specify whether supervision is provided on site. One copy of the list is to be kept at the facility. The Personnel Report (LIC 500) shall be used for this purpose or for licensees of facilities licensed by the State.

Licensees shall identify which positions they think should be exempt from fingerprinting because the persons in those positions do not have frequent and routine contact with children--or are employees of a child development program funded through the California Department of Education and possess a valid teaching credential or permit. The licensee shall sign an affidavit or LIC 500 that states:

“Persons in the following positions are under direct on-site supervision and provide care and supervision to children with only occasional or intermittent contact with the children.”

and/or

“Persons in the following positions are under direct on-site supervision and provide care and supervision to children.”

and/or

“Persons in the following positions are employed in a child development program funded through the California Department of Education and possess a valid teaching credential or permit.”

**PROCEDURE**

Review the Administrative Organization (LIC 309) to determine the name of the chief executive officer--or person serving in like capacity--of the corporation, etc., and to ensure that appropriate fingerprints have been obtained.

The Department shall determine if a private child care center, or a center operated by a school district, has a child development program by requesting to see its contract, which will be titled “Funding Terms and Conditions.”

Once it is established that a center receives child development funds, verify that the employees possess a credential or permit. If these 2 conditions exist, these employees are exempt from fingerprinting. All other employees subject to fingerprint clearance requirements shall be fingerprinted.

For additional information, see Sections 101169(c) and 101170(d) and Evaluator Manual Reference Material Section 7-0000 through 7-2300.

Clearances through the FBI are required for all individuals subject to a criminal record review obtained through the California Department of Justice. See Evaluator Manual Reference Material Section 7-1300.

**PROCEDURE**

Prior to the on-site inspection, make a copy of the Personnel Report (LIC 500) to compare with the Personnel Records (LIC 501) in the facility. Additionally, make a copy of the current LIS 531. (See Reference Material Section 8-4010.) Ensure by discussion with the licensee/administrator and verification of the date of employment or residence that all subject persons have met fingerprint requirements.

If there are persons in the facility who are subject to fingerprint requirements and who have not been fingerprinted, cite the facility on the LIC 809 for a Type A deficiency and assess immediate civil penalties in accordance with Reference Material Section 1-0055.

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(d)

**PROCEDURE**

When the Department is notified that an employee who is transferring from one facility to another has previously obtained a criminal record clearance, Regional Office staff shall disassociate the employee from the old facility and associate the employee with the new facility.

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(e)

**POLICY**

See Health and Safety Code Section 1596.871(5) in Appendix B of the Evaluator Manual. It requires that if the applicant is a firm, partnership, association or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, shall be fingerprinted.

Statute allows the chief executive officer or president or chairman of the board to designate a person responsible for the operation of the facility. The designated person must be fingerprinted in lieu of the chief executive officer. In addition, all applicable forms (LIC 200, 215, 503) must be completed and signed by the designated individual instead of by the chief executive officer.

This does not alter the current fingerprint requirements and documentation necessary for the on-site director.

## 101170.1 CRIMINAL RECORD EXEMPTIONS

101170.1

(a)(1-4) and (b)(1-2)

**POLICY**

Individuals with non-exemptible, felony, or violent misdemeanor convictions must be immediately removed from a licensed facility. Individuals with non-exemptible convictions are not eligible for an exemption. Persons with felony or violent misdemeanor convictions may request an exemption, but must remain out of the facility pending an exemption decision. Individuals may also be excluded from a licensed facility if an exemption is denied or if a previously granted exemption is rescinded. The notification process and Confirmation of Removal form discussed below are applicable in all of these circumstances.

The Licensing Agency will contact the licensee by telephone and advise that the individual must be removed from the facility. If the cause for removal is a conviction that can be exempted, the individual and the licensee of the facility with which they are associated, are sent a letter informing them that an exemption must be obtained before the individual can return to the licensed facility. For all removals, the licensee is sent a Confirmation of Removal form by the Licensing Agency. The licensee must complete the Confirmation of Removal form and return the form to the appropriate Regional Office by the date indicated on the notice. The Confirmation of Removal form confirms in writing that the person ordered removed from the facility is, in fact, removed.

*The above notification process is completed by the Caregiver Background Check Bureau, which processes criminal record information and requests for exemptions for all State licensed child care facilities. The Caregiver Background Check Bureau will send the Regional Office a copy of the notification letter which will include a copy of the Confirmation of Removal form for tracking and follow up purposes. Caregiver Background Check Bureau will attempt telephone contact the same day the letter is initiated (dated).*

**101170.1 CRIMINAL RECORD EXEMPTIONS (Continued)****101170.1****(a)(1-4) and (b)(1-2) PROCEDURE**

When a person has been ordered out of the facility, the Regional Office must have a tracking system in place to ensure that the Confirmation of Removal form is received at the Regional Office by the date indicated on the notice.

If the Confirmation of Removal form is received by the date indicated on the notice, the Regional Office will file the Confirmation of Removal form in the public section of the facility file; no site visit is required unless determined necessary (see C. below.)

If the Confirmation of Removal form is not received by the date indicated on the notice, the Licensing Program Analyst will telephone the licensee or designated person in charge of the facility within two (2) business days to verify that the person has been removed from the facility.

**The following procedures are to be followed depending on the information received from the telephone call:**

**A. If the licensee or designated person in charge of the facility states that the person has been removed but they failed to return the Confirmation of Removal form to the Regional Office, the Licensing Program Analyst will:**

1. Inform the licensee or designee that a citation for failure to return the Confirmation of Removal form will be issued by mail, unless a site visit is made to issue the citation (see C. below). The citation will be issued on the LIC 809 Facility Evaluation Report.
2. Require the licensee or designee, as a plan of correction, to fax or deliver the Confirmation of Removal form to the Regional Office by the close of the next business day.

The Confirmation of Removal forms are available to the public at the Department's website at: [www.cclد.ca.gov](http://www.cclد.ca.gov). Internet access is available at most public libraries. The Licensing Program Analyst will inform the licensee or designee of the correct Confirmation of Removal form to complete if the licensee indicates that they no longer have the form. (Note: if the licensee returns the wrong Confirmation of Removal form, it is acceptable as long as the identifying information on the form is completed for both the individual removed and the licensee.)

- [LIC 300A Confirmation of Removal form - Exemption Needed](#)
- [LIC 300B Confirmation of Removal form - Exemption Denied](#)
- [LIC 300C Confirmation of Removal form - Exemption Rescinded](#)
- [LIC 300D Confirmation of Removal form - Non-Exemptible Conviction](#)
- [LIC 300E Confirmation of Removal form – Counties](#)

**101170.1 CRIMINAL RECORD EXEMPTIONS (Continued)****101170.1**

3. Advise the licensee or designee that failure to fax or otherwise deliver to the Regional Office the Confirmation of Removal form by the plan of correction date (the close of the next business day) will result in the assessment of civil penalties of \$50 per day until corrected.
4. Mail the LIC 809 (via regular mail) with the citation to the licensee and designee within one (1) business day of the plan of correction due date.
5. The Licensing Program Analyst will know by the time the LIC 809 is mailed whether the plan of correction has been completed. If the licensee complies with the plan of correction to return the form, the violation is cleared and no civil penalties shall be issued. If the plan of correction has not been completed, follow Evaluator Manual Section 1-0060 and Child Care Center Regulation Sections 101194 and 101195 for civil penalty procedures. (A visit must be made to assess civil penalties.)

**The following is sample language to use for the citation:****Citation with Plan of Correction Completed and Deficiency Cleared**

“The following violation of the California Code of Regulations, Title 22, Division 12, deficiency is hereby cited: Section 101170.1(b) Criminal Record Exemption. The licensee failed to return the Confirmation of Removal form to the Regional Office by the due date indicated on the form. This presents an immediate threat to the health and safety of children in care as the Confirmation of Removal form is written documentation that the individual ordered removed is, in fact, removed from the facility.

As a plan of correction, the licensee was instructed to fax and/or deliver the Confirmation of Removal form to this Regional Office by (date). Verification was received on (date) and the deficiency is cleared.

Please review this report, make any comments you wish, sign, make a copy for your records, and mail the original back to the Regional Office by (date) at: (note Regional Office and mailing address.)”

**Citation with Plan of Correction Not Completed (Deficiency Not Cleared)**

“The following violation of the California Code of Regulations, Title 22, Division 12, deficiency is hereby cited: Section 101170.1(b) Criminal Record Exemption. The licensee failed to return the Confirmation of Removal form to the Regional Office by the due date indicated on the form. This presents an immediate threat to the health and safety of children in care as the Confirmation of Removal form is written documentation that the individual ordered removed is, in fact, removed from the facility.

As a plan of correction, the licensee was instructed to fax and/or deliver the Confirmation of Removal form to Regional Office by (date). Verification has not been received and the deficiency is not cleared.

**101170.1 CRIMINAL RECORD EXEMPTIONS (Continued)****101170.1**

Please review this report, make any comments you wish, sign, make a copy for your records, and mail the original back to the Regional Office by (date) at: (note Regional Office and mailing address.)”

**B. If the licensee or designee states that the individual has not been removed from the facility, the Licensing Program Analyst will:**

1. Inform the licensee or designee that the individual must be removed from the facility that day and that failure to comply with the order to remove the individual is grounds for administrative action against the license.
2. Inform the licensee or designee that citations for failure to remove the individual and failure to return the Confirmation of Removal form will be issued by mail, unless a site visit is made to issue the citation (see C. below).
3. Follow steps A. 2. – 5. above. Add a citation for violation of Section 101170.1(a) for failure to remove the individual when ordered to by the Licensing Agency.

**C. The Licensing Agency always reserves the right to make a visit to a facility to determine if an individual has been removed from the facility. If at any time the Licensing Program Analyst has reason to believe that the individual is still working or residing in the facility, the analyst must consult with the Local Unit Manager to determine if and when an on-site visit is necessary to investigate the situation. If it is determined that the individual is still working or residing in the facility during the visit, then the Licensing Program Analyst will:**

1. Inform the licensee or designee that the individual must be removed from the facility that day, and failure to comply with the order to remove the individual is grounds for administrative action against the license.
2. Issue a citation for violation of Section 101170.1(a) for failure to remove the individual.
3. Consult with the Local Unit Manager to initiate the appropriate administrative action (revocation and/or temporary suspension order).

101171

FIRE CLEARANCE

101171

(a) **POLICY**

“Maintained” means that the fire clearance is to be kept in the child care center’s file.

The State Fire Marshal considers physical disability—not the age of children--when determining ambulatory capacity. That is because sleeping facilities (excluding napping areas) are not provided in child care centers.

However, access by means of a ramp or elevator must be provided for persons with physical disabilities pursuant to Table 33-A of the 1979 Uniform Building Code. There may be coordination between the fire department and the building department to inspect for Building Code requirements such as ramps, restroom facilities for persons with physical disabilities, etc. In addition, some areas are inspected by the local fire department and not the State Fire Marshal--and there may be different/additional requirements imposed by each inspecting agency.

Policy regarding bedridden children is as follows:

1. A bedridden person is “a person confined to a bed, requiring assistance in turning or unable to independently transfer to and from bed, and unable to leave a building unassisted during emergency conditions.” This does not apply to infants ages 0 to 2 years of age.
2. Bedridden children shall be allowed in child care centers as long as the center does not provide medical care to the child. No bedridden child shall be admitted to a child care center unless the center has secured a bedridden fire clearance. Licensees found caring for bedridden children shall be informed that the child cannot be cared for unless the center obtains the appropriate fire clearance. The licensee shall be instructed to immediately notify the child’s authorized representative concerning this requirement. If the licensee requests a bedridden clearance, the licensing analyst shall indicate on the Fire Safety Inspection Request form (STD 850) that a bedridden clearance is required.

**PROCEDURE**

If the fire clearance is denied for a deficiency that appears to be correctable, contact the applicant. If the applicant’s decision is to correct, record the Plan of Correction data on the Contact Sheet (LIC 185) and return the folder to the file. If the deficiency is not correctable, or the applicant determines the correction would be too costly, begin the denial or withdrawal process, as appropriate.

If a fire clearance denial is received on a licensed center, the Department shall initiate the appropriate administrative action. Under no circumstances shall a license be issued without an appropriate fire clearance (if required), and under no circumstances shall the requirement for a fire clearance be waived.

**101171 FIRE CLEARANCE (Continued)**

**101171**

(a) **POLICY**

For licensing purposes, a fire clearance, once obtained, is valid throughout the life of a license and needs no renewal unless subsequently revoked by the State Fire Marshal.

When completing the STD 850 (fire safety inspection request form), count all children (including infants) as ambulatory/to age 18 in Item #11. Only children diagnosed with physical disabilities are to be shown as nonambulatory/to age 18 in Item #11.

Questions concerning requirements imposed on applicants/licenses by fire inspectors that appear to be non-fire safety standards should be forwarded to the State Fire Marshal Regional Office. There are three regional offices: Sacramento, San Leandro and West Covina.

See Section 101152n.(1) and Section 101161.

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(b) **PROCEDURE**

See Section 101161(a) "Policy" for "mainstreaming" information.

See Sections 101152n.(1) and 101161.

For centers that tend to use supportive restraints, instruct the clerk to note this on the fire clearance request.

The request for a fire clearance should specify when deaf persons are being served in a center--even though deaf persons are considered ambulatory--to ensure that the center has an appropriate alarm system as required by statute.

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**101172 WATER SUPPLY CLEARANCE**

**101172**

**POLICY**

Sanitation clearance inspections are requested only as required by this regulation, or if there are sanitation conditions that could adversely affect children's health and safety (See Section 101238). For example, if a center is located in an area where chemical contamination is a concern, an analysis of the water may be requested.

**PROCEDURE**

Discuss the need for a sanitation inspection with your Local Unit Manager since the applicant/licensee would have to pay a fee to obtain a sanitation inspection. Coordinate inspections with the local sanitation department.

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## 101173 PLAN OF OPERATION

101173

## (b)(1) POLICY

Existing regulations do not address Internet and non-internet video monitoring of child care centers. The use of monitoring systems will be treated as a matter of parental choice. Licensing has a responsibility to ensure that authorized representatives can make an informed choice regarding the transmission of the images of their children. Until regulations are adopted that specifically address the use of monitoring systems, these systems will be allowed in child care facilities provided set conditions are met.

## PROCEDURE

- A. Any applicant/licensee that chooses to use a monitoring system in a child care facility must include as part of their program statement, a detailed plan of the system to be used by the facility. The licensee is required to report any change in services provided (See Section 101212(e)(4)).
1. Facilities licensed prior to October 29, 1998, shall revise their program statement to reflect the addition of the monitoring system.
    - a. The revised program statement shall be submitted to the licensing office for review 60 days prior to installing the monitoring system.
    - b. Copies of the revised program statement shall be given to each authorized representative 30 days prior to installing the monitoring system.
  2. Effective October 29, 1998, applicants must include their plan for use of a monitoring system in their program statement submitted as part of application pursuant to Section 101169.
  3. Facilities licensed October 29, 1998, and after, that did not install a monitoring system initially but now choose to install a system, must follow 1(a) and 1(b) above.
- B. Any applicant/licensee that chooses to use a monitoring system in a child care facility must include as part of their admission agreement as specified in Section 101219, a statement notifying authorized representatives of the facility's use of a monitoring system.
1. Facilities licensed prior to October 29, 1998, shall revise their admission agreement to reflect the addition of the monitoring system.
    - a. The revised agreement shall be submitted to the licensing office 60 days prior to installing the monitoring system.

**PROCEDURE (Continued)**

- b. Authorized representatives shall sign the new agreement 30 days prior to installing the monitoring system.
- 2. Effective October 29, 1998, applicants must include a statement notifying authorized representatives of the facility’s use of a monitoring system in the admission agreement submitted as part of application pursuant to Section 101169.
- 3. Facilities licensed October 29, 1998, and after, that did not install a monitoring system initially but now choose to install a system, must follow 1(a) and 1(b) above.
- C. Authorized representatives must be informed of any security precautions including an explanation of whom might reasonably be expected to get access to the images of their children over the Internet and/or the non-internet video tape.
- D. Authorized representatives shall be informed of the location of the cameras.
- E. The facility shall post notices throughout the center informing visitors of the use of the monitoring system and the location of the cameras.
- F. Monitoring systems cannot be used when any child is in care for whom a parent has not signed the admission agreement reflecting use of the system.
- G. The use of the monitoring system shall not be a substitute for required staffing ratios, or visual observation of children as required by Regulation Sections 101229 and 101329.
- H. The facility shall notify authorized representatives and licensing pursuant to Section 101212 immediately of any security breaches and shut the system down until the facility assures licensing the security breach has been fixed.

**101174 DISASTER AND MASS CASUALTY PLAN**

**(d)(2) POLICY**

Disaster drills should ensure that children know exit routes. It is recommended that a diagram of the center clearly indicating exit routes be posted on all floors of the center.

During disaster drills, children should practice exiting the building according to plan--but relocating children would only occur in an actual disaster.

**101175 WAIVERS AND EXCEPTIONS FOR PROGRAM FLEXIBILITY 101175**

**(b)(3) POLICY**

A **waiver** may be granted when an applicant/licensee requests a variance to a specific regulation that relates to the overall operation of the center.

An **exception** may be granted when an applicant/licensee requests a variance to a specific regulation on behalf of an individual(s), e.g., a child or an employee.

An approval shall describe the alternate plan and specify the condition(s) under which the request is granted, including the duration of the waiver or exception. The duration of a waiver or an exception shall be for the term of the license, or for a shorter period at the request of the applicant/licensee, or as deemed necessary by the Department to ensure adequate and safe provision of service.

A denial shall fully explain the basis for denial.

**PROCEDURE**

See Reference Material Section 2-5000.

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**101179 CAPACITY DETERMINATION 101179**

**(d) PROCEDURE**

All decisions to reduce licensed capacity for existing licensees shall be approved by the Regional Office Manager and properly documented and supported in the center's files.

Inform the licensee in writing of the reasons why a reduced capacity was determined necessary. For existing licensees, a reasonable time period shall be provided if relocation of children is necessary.

If an applicant or a licensee does not voluntarily reduce licensed capacity, deny the initial application or initiate revocation action.

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**(e)(2) POLICY**

When restricted to specific children, the names of those children are confidential and shall not be printed on the license. The license shall state: "Restricted to specific children."

**PROCEDURE**

Complete the Confidential Names form (LIC 811). Inform the licensee in writing of the reason(s) for the restriction, referring to the children by number, and enclose a copy of the LIC 811. Instruct the clerk to file the letter in the public section of the facility file and the LIC 811 in the confidential section.

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**101180 WITHDRAWAL OF APPLICATION**

**101180**

(a) **POLICY**

The applicant has the right to withdraw an application any time prior to the issuance of a license. The withdrawal of an application shall not be considered a denial. But the withdrawal of an application shall not deprive the Department of its authority to institute or continue a proceeding to deny an application unless the Department has consented to the withdrawal in writing. If the Department consents to a withdrawal, administrative action cannot be taken. Therefore, written consent should not be given in situations where application denial is intended or pending. Additionally, the withdrawal of an application is not appropriate in situations where the application has already been acted upon (denied or approved).

**PROCEDURE**

If the Department is notified that an applicant is no longer interested in obtaining a license and wishes to withdraw his/her application, confirm in writing the applicant's intent to withdraw the application--and give consent to the withdrawal unless the Department is in the process of denying the application. If the Department is in the process of denying the application, continue the denial procedure and do not consent to the withdrawal of the application.

1. If a denial action is pending, send the following notification:

“We acknowledge receipt of your request to withdraw your child care center license application. This acknowledgment is not a consent to the withdrawal of your license application and does not deprive the Department of its authority to take action to deny your application.”

2. If denial action is not pending, send the following:

“We have received your request to withdraw your child care center license application and do hereby consent to the withdrawal. If you wish to obtain a child care center license in the future, you must reapply for a license.”

Document in the facility file the reason for consenting or not consenting to the withdrawal.

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**101181 PROVISIONAL LICENSE**

**101181**

(a) **POLICY**

Provisional licenses are not for the purpose of “expediting” the licensing process and are not to be used as “probationary licenses.” An applicant must comply with the criminal record and fire clearance requirements in order to meet the substantial compliance criteria. To the extent that waiting for these clearances “holds up” the licensing approval process, a provisional license cannot be used to remedy this situation.

**101181 PROVISIONAL LICENSE (Continued)****101181****PROCEDURE**

When an application for a provisional license is approved, route it to the clerk with the Transmittal for Processing (LIC 907) for typing and logging. Prepare a cover letter that describes the conditions of the provisional license and the deficiencies to be corrected before a regular license can be granted. The cover letter should conclude with a statement that unless all conditions are fulfilled a regular license will not be granted. Review of the provisional license and cover letter by the Local Unit Manager is required before mailing.

If during the term of a provisional license, health and safety risks arise:

1. Issue a Notification of Initial Application Denial (LIC 192) and establish in that letter the date the center must cease operations (taking into consideration any relocation of children that may be necessary). (See Section 101205.)
2. If the center continues operation after the effective date in the LIC 192, issue a Notice of Operation in Violation of Law (LIC 195). (See Section 101157.)

Before the termination of a provisional license, the Department shall (1) conduct a review to determine whether all licensing requirements are met and (2) deny or approve the application for a license.

**101182 ISSUANCE/TERM OF A LICENSE****101182**

(a)

**POLICY**

A child care center's failure to comply with a local ordinance or deed restriction shall not constitute grounds for denial of an application or revocation of a license unless the reasons for noncompliance are also violations of licensing laws and regulations.

**PROCEDURE**

1. If a city, county, landlord, etc., notifies the Department that an applicant/licensee is failing to meet the terms of a local ordinance or deed restriction, advise such person(s) that if the center meets the requirements of the Child Day Care Act and Title 22 of the California Code of Regulations, the applicant/licensee will be issued a license to operate a child care center. Such person(s) should be further advised that any administrative/legal action or recourse as it pertains to nonconformance with local ordinances or deed restrictions would have to be initiated and carried out by the city, county, landlord, etc., in question.
2. If such noncompliance is determined to be in violation of licensing laws and regulations, advise the applicant/licensee of the violation and take appropriate legal/administrative action, e.g., denial, issuance of civil penalties, etc. (See Sections 101205 through 101206.)

**101182 ISSUANCE/TERM OF A LICENSE (Continued)**

**101182**

**PROCEDURE (Continued)**

3. If it is discovered that a city, county, landlord, etc., has adopted/imposed a local ordinance or deed restriction that is in violation of state law, the Department shall not initiate or take legal/administrative action against the city, county, landlord, etc., on an applicant's/licensee's behalf. In such cases, the applicant/licensee shall be advised that if they meet all of the provisions of Title 22 and conform with state laws, they will receive a license.

(b)

**PROCEDURE**

Determine, as the result of a site visit, that the center and the licensee meet licensing requirements. Review the entire folder and make a final decision on the application. Forward the folder to the clerk with a Transmittal for Processing (LIC 907) recommending licensure and detailing limitations and the applicant's preferences.

**101186 CONDITIONS FOR FORFEITURE OF A  
CHILD CARE CENTER LICENSE**

**101186**

**POLICY**

Health and Safety Code Section 1596.858 clarifies that a license is forfeited by law prior to the expiration date under the following circumstances:

1. The licensee sells or transfers the child care center or center property (unless the property sale/transfer does not result in a change in licensee).
2. The licensee surrenders the license to the Department.
3. The licensee moves the center from one location to another. Licensees do not have to complete the entire application process when applying for a license for the new location.
4. The licensee is convicted of an offense specified in Sections 220, 243.4, 264.1, paragraph (1) of 273a, 273d, 288, 289 of the Penal Code or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.
5. The licensee dies.
6. The licensee abandons the center.

101186 CONDITIONS FOR FORFEITURE OF A  
CHILD CARE CENTER LICENSE (Continued)

101186

**PROCEDURE**

The procedure stated below applies to Health and Safety Code Section 1596.858.

When any one of the above six circumstances occur, complete the following steps:

1. If you were informed of the forfeiture by a phone call from the licensee, document the specifics of the phone conversation on a Contact Sheet (LIC 185). Inform the licensee that a letter will be sent to him/her acknowledging the forfeiture and asking the licensee to mail in the original license.
2. If you were informed of the forfeiture by a letter from the licensee, contact the licensee by telephone, if possible, and inform the licensee that a letter will be sent to him/her acknowledging the forfeiture and asking the licensee to mail in the original license. Document date of receipt of the letter and the telephone conversation on an LIC 185.
3. If you became aware of the forfeiture during a facility visit, document the information on a Facility Evaluation Report (LIC 809) and ask the licensee for the original facility license. Inform the licensee (and note that you have done so on the LIC 809) that a letter will be sent to him/her acknowledging the forfeiture of the license. If you made a site visit, and a child care center appeared to be closed or abandoned, please note that closure of a center does not mean that the licensee has forfeited the facility license. Contact the licensee by telephone or letter and ask the licensee if the center is closed and if the licensee wishes to forfeit the facility license. Inform the licensee that if he/she does wish to forfeit the license, a letter will be sent to him/her acknowledging the forfeiture and asking the licensee to mail in the original license.
4. If you were informed of the forfeiture by a source other than the licensee, or if there are any questions about the closure, contact the licensee by telephone or letter and ask the licensee if he/she wishes to forfeit the facility license. Inform the licensee that if he/she does wish to forfeit the license, a letter will be sent to him/her acknowledging the forfeiture and asking the licensee to mail in the original license.
5. Send the following notification by certified mail to the licensee at the last known address. Include a stamped, self-addressed envelope if the licensee has not previously turned over the original facility license.

“Your license is forfeited by operation of law pursuant to Health and Safety Code Section 1596.858 effective \_\_\_\_.\* Your license is no longer valid and all provision of care and supervision must cease. If you have not already done so, please send your license to the above address. If you wish to again operate a child care center, you must reapply and be approved for a new license.”

(\*The effective date should be the date of notification unless a later closure date has been agreed upon.)

101186 CONDITIONS FOR FORFEITURE OF A  
CHILD CARE CENTER LICENSE (Continued)

101186

## PROCEDURE (Continued)

If an administrative action is pending or planned, Regional Offices are to notify the Office of the Chief Counsel, and counties are to notify their county liaison, of any activity regarding the license--and then continue the administrative action process.

**NOTE:** When a forfeiture is the result of a surrender of a license, do not use the term "surrender"--use the above language.

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**POLICY**

(Health and Safety Code Section 1596.803)

Health and Safety Code Section 1596.803 states in part that failure to pay the required license fees, including the finding of insufficient funds to cover bona fide business or personal checks submitted for this purpose, shall constitute grounds for denial of a license or forfeiture of a license.

The object of citing a licensee as "unlicensed" without an actual facility visit when the licensee admits to continuing operation is to save both time and effort on the part of local licensing staff.

**PROCEDURE**

Refer to Reference Section 3-1600, Review of Annual License Fee Notice (LIC 201F).

The **PROCEDURE** stated below applies to Health and Safety Code Section 1596.803.

When the facility file contains no proof of payment or information stating the licensee has ceased operation and surrendered his/her license, licensing staff shall attempt to contact the licensee to find out if the licensee plans to continue operating.

If the licensee is believed to be operating, licensing staff are to contact the licensee by phone and advise them that the fee must be paid immediately. Licensees are to be advised that failure to pay the annual fee will result in the forfeiture of their license and may make them subject to civil penalties.

If the licensee claims to have previously paid the fee or to have ceased operation, send a Final Notice Non-Payment of Fees letter (sample below) to both the facility address and the licensee's address (if they are different) by regular mail service as a follow-up to the phone conversation.

If the licensee refuses to pay the annual licensing fee, send the Final Notice Non-Payment of Fees letter to them by regular mail service. Licensing staff may wish to explain to the licensee that the Final Notice letter will be mailed to them.

If the Department receives proof of previous payment or full payment of the annual fee prior to the licensee's anniversary date, no further action is necessary.

101186 CONDITIONS FOR FORFEITURE OF A  
CHILD CARE CENTER LICENSE (Continued)

101186

## PROCEDURE (Continued)

If there is no response to the Final Notice Non-Payment of Fees within the required time, then within one week send the Notice of Forfeiture (sample below) to both the facility address and the licensee's address (if they are different) by regular mail service.

If the licensee has requested a meeting in response to the Final Notice letter, the evaluator who issued the Final Notice and a higher-level staff person shall arrange to meet with the licensee or his/her representative. If it is determined that the licensing fee is not due or has been paid (for example, a credit is due because of a previous overpayment), then no further action is needed.

If it is determined that the licensing fee is due and the licensee refuses to pay it, then the Notice of Forfeiture, as shown below, shall be given to the licensee or his/her representative at the time of the meeting provided it is after the licensee's anniversary date.

If the annual licensing fee remains unpaid on the 16th calendar day from the effective date on the Notice of Forfeiture, the licensee is to be assessed civil penalties. Licensing staff are to refer to Title 22, Section 101157, Operation Without a License, and Section 101198, Unlicensed Facility Penalties, for further instructions. A site visit is not necessary to assess civil penalties. The Notice of Forfeiture will be used in lieu of the Notice of Operation in Violation of Law until regulations are in place.

**Following is a sample Final Notice Non-Payment of Fees letter:**

“You were previously notified that your annual license fee is due. Our records indicate that your fee of \$ \_\_\_\_\_ has not been received in this office. If you believe you have paid this fee and that our records are in error, please provide us with a copy of your cancelled check or other evidence of payment within 2 weeks of the date of this letter.

“If you feel this fee is not due, or if there is any other reason for your failure to pay the fee, you should contact your local licensing office and schedule a meeting to discuss these issues. A date and time will be arranged for you to present your information. You have 2 weeks from the date of this letter to contact your local licensing office and request a meeting.

“Please be advised that payment of an annual licensing fee is required under Health and Safety Code Section 1596.803. Failure to pay the annual fee is grounds for forfeiture of your license. If you have not yet paid this fee, either the full payment or your request for a meeting must be received in our licensing office within 2 weeks from the date of this letter.

“If you do not wish to continue operating a licensed facility, please check the box below and return this notice along with your license to us within the above 2-week period.

- “I do not wish to continue operation of my child care facility. I am surrendering my license and am not providing any care and supervision as authorized by this license. I am also aware that to provide care and supervision without a license makes me subject to civil penalties and/or criminal prosecution.

101186 CONDITIONS FOR FORFEITURE OF A  
CHILD CARE CENTER LICENSE (Continued)

101186

## PROCEDURE (Continued)

“If you choose to surrender your license or your license is forfeited, we will notify the appropriate child care resource agencies and remove the name of your child care facility from our list of licensed facilities.”

**Following is a sample Notice of Forfeiture letter:**

“Because you have failed to pay your annual fee, your license to operate a child care facility is forfeited by operation of law pursuant to Health and Safety Code Section 1596.803 effective \* \_\_\_\_\_. As of this date your license is no longer valid.

“You have 15 calendar days from the date of this notice to make full payment of your annual licensing fee or to submit a new application for licensure, including the required application fee, to your local licensing office.

“If you continue to operate a child care facility, you are in violation of Health and Safety Code Section 1596.80 and you are subject to a civil penalty assessment of \$200.00 per day, effective on the 16th calendar day from the date of this notice, unless full payment of your annual licensing fee reaches us within the required time.”

(\*The effective date should be the date of notification unless a later closure date has been agreed upon.)

## 101187 APPLICATION/ANNUAL FEES

101187

The following procedures are pursuant to Health & Safety Code Section 1596.803.

This process is intended to give an overview of the entire fee collection process. The Regional Office is responsible for the Regional Office Procedures only.

**MAILING OF LICENSING INFORMATION SYSTEM GENERATED ANNUAL LICENSE FEE NOTICE**

The *Annual License Fee Notice* is automatically generated by the Licensing Information System the first Wednesday of every month and centrally mailed out from the California Department of Social Services mailroom to the licensee’s address four months prior to the facility’s anniversary date. For aggregate facility types, only the primary facility will receive this notice.

***If a licensee pays the annual fee after the facility’s anniversary date, Regional Office staff must inform the licensee to submit a new license application and new application fee to become re-licensed. Any exceptions to this must be approved by the Regional Manager.***

## 101187 APPLICATION/ANNUAL FEES (Continued)

101187

*A licensee who fails to pay the full annual fee by the facility's anniversary date subjects the license to forfeiture. In the event the licensee continues to operate after the license is forfeited, the licensee is operating an unlicensed facility and is subject to unlicensed facility penalties pursuant to Health and Safety Code 1596.891(a). The Regional Office staff are to follow the regulation section for Unlicensed Facility Penalties and Evaluator Manual Section 1-0640.*

*If a licensee is involved in the sale and transfer of the property and business, the annual fee does not have to be paid provided the parties involved in the transfer fully comply with the requirements of Health and Safety Code 1597.14(e) and the new application fee has been paid. This is the only circumstance that relieves the licensee from paying the statutorily mandated annual fee when due.*

**Notice advises licensee to:**

- Send the fee payment in the form of a check or money order to the Central Office Cashiering, MS 14-67, P.O. Box 944243, Sacramento, CA 94244-2430, due 30 days prior to the facility anniversary date; or
- Indicate on the *No Longer in Business Notification* located on the reverse side of the fee notice if the facility is no longer in operation as a child care center facility and return it to the Regional Office.

**Regional Office Information**

- If the Regional Office receives an annual payment, the check must be endorsed and transferred with supporting documentation to the Central Office Cashiering on a daily basis;
- No action is necessary if at any time prior to the facility's anniversary date full payment of the annual license fee is received and entered by the Central Office Cashiering into the Licensing Information System.

**Central Office Cashiering Information**

- Central Office Cashiering will input fee payment into the Licensing Information System Cashiering screen within 48 hours of receipt;
- Central Office Cashiering will verify that transmittal document concurs with enclosed checks;
- Facility information changes made on the *Annual License Fee Notice* and *Aggregate Annual License Fee Notice* are forwarded to the Central Operations Branch by the Central Office Cashiering. The Central Operations Branch sends the copies on to the Regional Office for the Licensing Information System to be updated.

101187 APPLICATION/ANNUAL FEES (Continued)

101187

**PROCEDURE****For the Regional Office**

**NOTE:** *The LIC 201F will no longer be used. The Annual License Fee Notice is now a back-to-back one-page letter generated by the Licensing Information System.*

**Non-Aggregate Facilities**

Should a licensee return the *Annual License Fee Notice* to the Regional Office with the signed *No Longer in Business Notification* indicating the facility is no longer in operation, Regional Office staff will enter this information into the Licensing Information System *Facility Closure* screen using Closure Code 3, "Closed-Licensee-Initiated," and file the notice in the facility file. (Refer to Section 3-1600 for surrender acknowledgement instructions and follow office procedure). Note: Analyst must be informed of the closure. No additional automated notices will be produced.

**Any Annual License Fee Notices, Final Notices or Forfeiture Notices that are returned to the Regional Office that are signed and indicate a Reason for Closure on the No Longer in Business Notification, Regional Office staff must forward a copy of the Reason for Closure to the Technical Assistance Bureau at MS 19-56.**

**PROCEDURE****For the California Department of Social Services Mailroom**

- On the first Thursday of every month, the California Department of Social Services mailroom personnel pick up the *Annual License Fee Notice* from the Health and Welfare Data Center for mailing to the licensee's address by the following day.

**Aggregate Facilities**

**Facilities that are participating in the Aggregate Rate Fee Program can be identified as an aggregate rate facility by the "Secondary" or "Primary" facility indicators located underneath the "Facility Type" field on the Licensing Information System Payment History Report screen. For secondary facilities, the number that is shown to the right of the facility type is the facility number of the aggregate primary.**

When a primary facility returns the *Aggregate Annual License Fee Notice* with the *No Longer In Business Notification* signed and indicating the facility is no longer in operation, Regional Office staff must contact the Aggregate Program Coordinator in the Central Operations Branch to have the access code changed in the Licensing Information System to a secondary facility type. The Central Operations Branch aggregate personnel will then notify the Regional Office staff the facility is ready for closing in the Licensing Information System. Note: Analyst must be informed of closure. (Refer to Section 3-1600 for surrender acknowledgement instructions and follow office procedure for closing facility file.) No additional automated notices will be produced.

## PROCEDURE (Continued)

**For the California Department of Social Services Mailroom**

- On the first Thursday of every month, the California Department of Social Services mailroom personnel pick-up the *Aggregate Annual License Fee Notice* from Health and Welfare Data Center for mailing to the licensee of the primary facility by the following day.

**MAILING OF THE LICENSING INFORMATION SYSTEMS GENERATED  
FINAL NOTICE OF ANNUAL LICENSE FEE-UNDERPAYMENT****For Non-Aggregate Facilities**

If the full annual fee payment has *not* been entered into the Licensing Information System by the Central Office Cashiering by approximately the 22nd day preceding the facility's anniversary date, (this can be viewed on the *Payment History/Aggregate Menu* screen by the Regional Office staff) or the licensee-initiated closure code has not been entered, the Licensing Information System will generate a *Final Notice of Annual License Fee For Annual Fee* and a *No Longer in Business Notification*. The Regional Office will receive copies of the notices every Friday for filing in the facility file, as well as a *Listing of Facilities Issued a Final Notice for Annual Fee*. This listing identifies facilities requiring a follow-up courtesy call by the Regional Office.

**For Aggregate Facilities**

If the full annual fee payment has *not* been entered into the Licensing Information System by approximately the 22nd day preceding the primary facility's anniversary date, (this can be viewed on the *Payment History Aggregate Menu* screen by the Regional Office staff) the Licensing Information System will generate a *Final Notice of Annual License Fee-Underpayment* and a *No Longer in Business Notification*. The Regional Office will receive copies of the notices for filing in the primary and secondary facility files as well as a *List of Facilities Issued a Final Notice for Annual Fee*. This listing identifies facilities requiring a follow-up courtesy call by the Regional Office.

**Notice advises licensee that:**

- Full payment of the annual fee has not been received and the fee is required to remain licensed pursuant to Health & Safety Code 1596.803;
- If payment has already been made the licensee must provide evidence to the local Regional Office listed on the reverse side of the notice;

**PROCEDURE (Continued)**

- If the facility is no longer in operation, the licensee is to sign in the area indicated on the *No Longer in Business Notification* located on the reverse side of the letter stating they are no longer providing care and supervision to clients and return it with their original license(s) to the listed Regional Office. Please Note: The *No Longer in Business Notification* can only be signed by the primary facility licensee for purposes of closing the primary or a secondary aggregate facility. Signatures from secondary facility licensees cannot be accepted.;
- If full payment is not received by the facility's anniversary date, their license(s) will be forfeited, pursuant to Health & Safety Code 1596.803(d) for failure to pay;

In the event of forfeiture, the Department will notify appropriate referral agencies and notify Food Grant Programs and Alternative Payment Programs of the facility closure. (The Central Operations Branch generates a monthly listing to the Department of Education of this closure information.)

**The licensee is instructed to:**

- Mail the payment prior to the facility's anniversary date in the form of a money order or cashier's check only; or
- Submit proof of payment to their local Regional Office, (for aggregate facilities, to the primary facility's Regional Office), if the licensee has already paid the current annual fee; or
- If the facility is no longer in operation, to sign and return the *No Longer in Business Notification* found on the reverse side of the notice with the original license to the listed Regional Office by the facility's anniversary date, for aggregate facilities, this would be the primary aggregate facility's anniversary date. (This procedure is to inform Regional Office staff of the operational status of a facility only. This notice is not used for a facility relocation or change in ownership).

**PROCEDURE****For the Regional Office**

*(These procedures apply to both non-aggregate facilities as well as aggregate facilities).*

- A *List of Facilities Issued a Final Notice For Annual License Fee* is printed every Friday at the Regional Office;

## PROCEDURE (Continued)

## For the Regional Office (Continued)

- The Regional Manager or his/her delegate calls the licensees on the *List of Facilities Issued a Final Notice For Annual License Fee*. The phone calls shall be made within seven (7) calendar days following the date the report prints to find out the status of the fee payment and facility operation;
- If the licensee states the facility is still in operation, the licensee must be informed that in order to retain their license, they must pay the full annual fee by close of business of their anniversary date or their license(s) will be forfeited by operation of law;
- If the licensee states that the facility is no longer in operation, the Regional Office must ask the licensee if they wish to surrender their license. If the licensee chooses to surrender the license, direct them to sign and return the *No Longer in Business Notification* acknowledging the surrender with their original license to the listed Regional Office. Upon receipt of the signed *No Longer in Business Notification* or other written notification, the license will be forfeited pursuant to Health & Safety Code 1596.858(b). Regional Office staff are to input Closure Code 3 “Closed-Licensee-Initiated” into the Licensing Information System. (Refer to 3-1600 for surrender acknowledgement instructions and follow office procedure for closing file). **NOTE:** Analyst must be informed of closure. No additional automated notices will be produced. If a written statement or the signed *No Longer in Business Notification* is not received by the facility anniversary date, the license is forfeited pursuant to Health & Safety Code 1596.803(d). The facility must be closed on the Licensing Information System under Closure Code 7, “Closed-non-payment.” (Please refer to *Closing A Facility Due To Nonpayment-For Regional Office* procedures.)
- The Regional Office must document all related telephone conversations on a Contact Sheet (LIC 185) to be placed in the facility file;
- If the Regional Office receives proof of payment from the licensee, the Regional Office must place a copy into the facility file and forward the original documentation to the Accounting Unit, MS 13-72 for entering into the Licensing Information System. The Accounting Unit will reconcile the proof of payment with the Licensing Information System by posting payment information into the *Payment History Report* screen. No additional automated notices will be produced.

**PROCEDURE****For the California Department of Social Services Mailroom**

- The California Department of Social Services mailroom sends these notices to the licensee's address and, if different, to the facility's address. For aggregate facilities, the notice is mailed to the primary licensee's address, and if different, to the primary facility address. Secondary facilities receive a copy as well.

**MAILING OF LICENSING INFORMATION SYSTEMS GENERATED NOTICE OF FORFEITURE**

**This list is informational only**

**For Non-Aggregate Facilities**

If the full annual license fee payment has *not* been entered into the Licensing Information System by the Central Office Cashiering by approximately the 8th day preceding the facility's anniversary date, (this can also be viewed on the *Payment History/Aggregate Menu* screen by the Regional Office staff) or the licensee-initiated closure code has not been entered into the Licensing Information System, the Licensing Information System will generate a *Notice of Forfeiture* and a second *No Longer in Business Notification*. The Regional Office will receive copies of the notices for filing into the facility file, as well as, a *List of Open Facilities issued a Notice of Forfeiture/Revocation Letter*. This listing is also printed at the Child Care Program Office for information only.

**For Aggregate Facilities**

If the full annual license fee payment has *not* been entered into the Licensing Information System by the cashiering office by approximately the 8th day preceding the primary facility's anniversary date, (this also can be viewed on the *Payment History/Aggregate Menu* screen by the Regional Office staff), or the licensee-initiated closure code has not been entered into the Licensing Information System, the Licensing Information System will generate a *Notice of Forfeiture* and a second *No Longer in Business Notification*. The Regional Office will receive copies of the notices for filing into the facility file, as well as, a *Listing of Open Facilities Issued a Notice of Forfeiture/Revocation Letter*. This listing is also printed at the Child Care Program Office for information only.

**Notice advises licensee that:**

- Their license(s), includes primary and secondary facilities, to operate a child day care facility will be forfeited pursuant to Health & Safety Code Section 1596.803(d), on the facility anniversary date due to nonpayment of the annual license fee;
- If the license(s) is/are forfeited, the licensee will be required to resubmit a new licensing application and fee to become re-licensed;
- If the licensee continues to operate with a forfeited license, they will be in violation of Health & Safety Code Section 1596.80 and will be subject to penalty assessment for operating without a valid license pursuant to Health & Safety Code Section 1596.891(a);

**The licensee is instructed to:**

- Mail the payment prior to the facility's anniversary date in the form of a money order or cashier's check only; or
- Send in the *No Longer in Business Notification* with the original license(s) to the listed Regional Office.

**PROCEDURE****For the Regional Office**

***(These procedures apply to both non-aggregate facilities as well as aggregate facilities)***

- A *List of Facilities Issued a Notice of Forfeiture/Revocation Letter For Annual Fee* is printed every Friday at both the Child Care Program Offices and Regional Offices;
- If the Regional Office receives the *No Longer in Business Notification* by the facility's anniversary date, the Regional Office must input Closure Code 3, into the *Facility Menu* of the Licensing Information System, "Closed-Licensee Initiated." (Refer to Section 3-1600 for surrender acknowledgement instructions and follow office procedure for closing file.) **NOTE:** Analyst must be informed of closure.

**PROCEDURE****For the California Department of Social Services Mailroom**

- The California Department of Social Services mailroom sends these notices to the licensee's address and, if different, to the facility's address. For aggregate facilities, the notice is mailed to the primary licensee's address, and if different, to the primary facility address. Secondary facilities receive a copy as well.

**CLOSING OF A FACILITY DUE TO NONPAYMENT-FOR REGIONAL OFFICES**

*A Statement of Facts is not necessary to process a closure of a due to nonpayment of the annual fee. A Statement of Facts is only necessary to process the closure of Residential Care Facilities for the Chronically Ill for nonpayment of the annual fee.*

***For Non-Aggregate Facilities***

If the full annual fee has *not* been entered into the *Payment History/Aggregate Menu* screen of the Licensing Information System or the licensee-initiated closure code into the *Facility Closure* screen by approximately the eleventh day following a facility's anniversary date, the facility will appear on the *Listing of Facilities To Be Closed For Non-Payment of Annual Fee*. This listing informs the Regional Office of the facilities that are currently open on the Licensing Information System that need to be closed due to forfeiture of their license from nonpayment of their annual license fee. This listing prints each Monday evening at the Regional Office and every month on the second Monday at the Child Care Program Office.

***For Aggregate Facilities***

The primary aggregate facility's failure to pay the annual fee will result in all licenses within the aggregate group being forfeited. If the primary facility is no longer operating, the aggregate payment can be made by any of the secondary facilities in order to avoid forfeiture of their licenses. Should this be the case the Community Care Licensing Division Aggregate Program Coordinator in the Central Operations Branch should be notified so that a secondary facility can be converted to the primary facility status.

This listing informs the Regional Office of the aggregate facilities that are open on the Licensing Information System that need to be closed due to forfeiture of their license. Facilities will appear on the *Listing of Facilities To Be Closed Due To Nonpayment* if the full annual fee has not been entered into the *Payment History/Aggregate Menu* screen or the licensee-initiated closure code into the *Facility Closure* screen. These facilities will appear on the list approximately 11 days following the primary facility's anniversary date. The primary facility and all of the associated secondary facilities will appear on the closure list. This listing prints each Monday evening at the Regional Office and every second Monday of each month at the Regional Offices.

### PROCEDURE

#### For the Regional Office

*(These procedures apply to non-aggregate facilities only)*

**REGIONAL OFFICE STAFF MUST RESEARCH EACH FACILITY TO VERIFY THE ACCURACY OF THE FACILITY'S NON-PAYMENT STATUS, PRIOR TO CLOSING THEM IN THE LICENSING INFORMATION DATABASE.**

**If a licensee pays the annual fee after the facility's anniversary date, Regional Office staff must inform the licensee to submit a new license application and new application fee to become re-licensed. Any exceptions to this must be approved by the Regional Office Manager.**

- Regional Office staff must close the facilities in the Licensing Information System under Option #7, "Closed-Non-Payment." This closure option is under Option #9, Application/Facility Closure which is under Option #5, Facility Menu;
- Follow through with Regional Office policy for closing facilities;
- Facilities must be closed within ten calendar days from the date the report prints.

Visits are discretionary for verifying if facility operation has ceased.

**PROCEDURE****For the Regional Office**

*(These procedures apply to aggregate facilities only)*

**REGIONAL OFFICE STAFF MUST RESEARCH EACH FACILITY TO VERIFY THE ACCURACY OF THE FACILITY'S NON-PAYMENT STATUS, PRIOR TO CLOSING THEM IN THE LICENSING INFORMATION SYSTEM DATABASE.**

- Regional Office staff must close the secondary aggregate facilities listed under Closure Code 7, "Closed-Non-Payment" of the *Facility Closure Screen* of the Licensing Information System. Regional Office staff must close the facilities listed in the Licensing Information System under Option #7, "Closed-Non-Payment." This closure option is under Option #9, *Application/Facility Closure* under Option #5 of the *Facility Menu*;
- To close primary aggregate facilities, Regional Office staff must notify the Central Operations Branch aggregate coordinator. The aggregate coordinator must change the primary facility to a secondary facility in the Licensing Information System. Upon completion, the aggregate coordinator contacts the Regional Office to close the facility. Regional Office staff are to follow closure procedures for secondary facilities stated above;
- Follow through with Regional Office policy for closing facilities;
- Facilities must be closed within ten calendar days from the date the report prints.

*Visits are discretionary for verifying if facility operation has ceased.*

**CLOSING A FACILITY DUE TO NONPAYMENT-FOR THE CHILD CARE PROGRAM OFFICE****This list is informational only**

The *Listing of Facilities To Be Closed Due For Nonpayment of Annual Fee* prints on every month on the second Monday at the Child Care Program Offices. This list captures facilities remaining open on the Licensing Information System from 11 to 30 days past their facility's anniversary date and in increments of 30 days thereafter. *The Child Care Program Office report and Regional Office report are the same report and can be referenced by the report run date.* Due to the report only reflecting facilities from the current billing cycle, facilities that remain open on the Licensing Information System without a fee payment can remain on the report for up to eight months past their facility's anniversary date before dropping off.

## 101187 APPLICATION/ANNUAL FEES (Continued)

101187

**MAILING OF LICENSING INFORMATION SYSTEM PRODUCED DISHONORED CHECK NOTICE**

If the check processed for the annual fee is dishonored due to insufficient funds, stale date or closed account, the Accounting Unit will enter returned check information into the *Payment History Report* screen of the Licensing Information System. This will immediately generate a *Dishonored Check Notice* to the licensee. The Accounting Unit is responsible for mailing the notice certified mail to the licensee. A facility file copy is printed at the Regional Office. If the check is returned by the bank due to insufficient funds, stale date or closed account, the Regional Office will receive a copy of the *Dishonored Check Notice*.

If the check is returned due to stop payment, the Regional Office will receive a copy of the *Dishonored Check Notice* and a faxed copy of the stop payment check from the Accounting Unit. See Regional Office procedures below for further instructions.

**The Dishonored Check Notice advises the licensee that:**

- The check for payment of the annual license fee was returned by the bank because of insufficient funds;
- The licensee has 30 days to submit payment in the Total Due amount listed on the letter unless evidence is provided an error was made by their financial institution;
- The license will be subject to forfeiture if payment has not been submitted to the Accounting Unit or appropriate documentation by the facility's anniversary date;
- If the check was dishonored due to stop payment, the licensee must provide the Department with a Good Faith Dispute in the manner provided in Civil Code 1719 within 30 days from the date of the letter;
- Continued operation after the facility's anniversary date without a license will result in the assessment of unlicensed facility penalties pursuant to Health & Safety Code Section 1596.891(a).

**The licensee is instructed to:**

- Mail payment in the form of a cashier's check or money order only. A personal or business check will no longer be accepted per Health & Safety Code 1596.803(c); or
- If the licensee wants to dispute this claim, they must submit documentation to the Accounting Unit from their financial institution to support their claim otherwise payment for the Total Due amount is necessary;

## 101187 APPLICATION/ANNUAL FEES (Continued)

101187

- If the check was dishonored due to a stop payment, and if the license is asserting a Good Faith Dispute pursuant to Civil Code 1719, they must provide the Accounting Unit with a written statement of reasons for the stop payment; or
- If payment has already been resubmitted, return the *Dishonored Check Notice* with the check number and date of remittance to the Accounting Unit.

**Regional Office Procedures:**

- **If the Regional Office receives a copy of the *Dishonored Check Notice* only, Regional Office staff are to file the notice into the facility file. No additional action will be necessary provided the annual fee payment is paid prior to the due date.**
- If the Regional Office receives a copy of the *Dishonored Check Notice* along with a copy of the check indicating a stop payment:
  - Regional Office staff must investigate the reason for the stop payment by contacting the licensee within 30 days from the date of the notice.
- If the Regional Office is notified verbally or in writing by the licensee that they are asserting a Good Faith Dispute, and as a result a stop payment has been placed on the annual fee check, they must adhere to the following procedures to preserve the Department's rights under Civil Code 1719 to collect the annual fee:
  - Regional Office staff must ask the licensee what the Good Faith Dispute is about i.e. a statement of reasons for the stop payment;
  - Regional Office staff must contact the consulting attorney assigned to their Regional Office regarding the Good Faith Dispute claim. The consulting attorney will recommend the appropriate course of action, i.e., to either go forward with forfeiture/revocation or keep the case on hold to try to work out the dispute, etc.;
  - Regional Office staff must document all communication on a contact sheet (Form LIC 185) and keep in the public section of the facility file;
- If the Regional Office receives the *List of Facilities Issued a Final Notice For Annual Fee* and it includes the facility issued a *Dishonored Check Notice*:

## 101187 APPLICATION/ANNUAL FEES (Continued)

101187

- Regional Office staff must check the list or the Licensing Information System for facility billing status and follow procedures listed under *Mailing of the Licensing Information System Generated Final Notice of Annual License Fee-Underpayment*;
- If the Regional Office receives the *List of Facilities Issued A Forfeiture/Revocation Letter For Annual Fee* and it includes the facility issued the *Dishonored Check Notice*:
  - Regional Office staff must check the list or the Licensing Information System for facility billing status and follow procedures listed under *Mailing of the Licensing Information System Generated Notice of Forfeiture*;
- If the Regional Office receives the *Listing of Facilities To Be Closed for Nonpayment of Annual Fee* and it includes the facility issued the *Dishonored Check Notice*:
  - Regional Office staff must check the list or the Licensing Information System for facility billing status and follow procedures listed under *Closing A Facility Due To Nonpayment-For Regional Offices*.

## ARTICLE 4 ENFORCEMENT PROVISIONS

## 101193 DEFICIENCIES IN COMPLIANCE

101193

## (a) POLICY

Deficiencies are non-compliances with either licensing laws or regulations. A Type A deficiency, as defined in Title 22, Section 101152 (s) (3), is “a deficiency that presents an immediate or substantial threat to the physical health, mental health, or safety of the children of a child care center.” Section 101193 lists examples of key regulations that **may** result in a Type A deficiency citation. This list is not conclusive, and lack of compliance with any of the regulations does not automatically trigger a Type A citation. But noncompliance with any of the regulations listed will **generally** indicate the existence of a threat to the health and safety of the children commensurate to a Type A and should be so cited.

Further, lack of compliance with Section 101170, relating to criminal record clearance, and with Section 101171, relating to fire clearance, will always be cited as a Type A deficiency. These are 2 requirements that are essential to ensure the provision of adequate and safe care to children.

## PROCEDURE

When you identify a deficiency, you must write the deficiency on the Facility Evaluation Report (LIC 809). If a deficiency that has not previously been cited is corrected during the visit, you may use your discretion in determining whether it should be documented on the LIC 809. Very minor infractions, such as dusty nightstands or a burned-out light bulb, should be handled verbally by telling the licensee to correct the infraction. However, all other deficiencies shall be included on the LIC 809 with an indication of whether or not correction was made at the time of the visit. (See also Reference Material Sections 3-3100 through 3-3700 and 3-4000 through 3-4500.)

## (b) PROCEDURE

During the exit interview, discuss the following:

1. Deficiencies observed and cited on the LIC 809.
2. The plan for correcting any deficiencies, including due dates, and, if necessary, interim steps for completing each part of the plan. (See also Evaluator Manual Reference Material Section 3-3600.)
3. The civil penalties process and the licensee’s appeal rights. (See Sections 101193 through 101195 and Reference Material Section 1-0040 through 1-0070.)

If a child care center has deficiencies that could pose an immediate threat to children’s health and safety (e.g., a broken, jagged window is observed in a center or in an area frequently used by children), remain on the premises until any dangerous conditions can be remedied.

**101193 DEFICIENCIES IN COMPLIANCE (Continued)**

**101193**

(b) **PROCEDURE (Continued)**

The Facility Evaluation Report (LIC 809) is used for documenting site visits, civil penalties and office visits. The LIC 809 is signed by the evaluator and the licensee/administrator (or designee). The original of the completed LIC 809 is kept by the Regional Office and a copy is given to the child care center.

Refer to Section 101200 for mandatory notification of child care resource and referral agencies and/or the California Department of Education.

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(c) **PROCEDURE**

It is expected that the writing of the LIC 809 will be completed in the field at the conclusion of the evaluation visit. There are exceptions to this general practice. For example, an evaluator may be conducting a lengthy and complex inspection that extends beyond normal working hours. Or, because of uncertainty about whether a violation should be cited as a Type A or Type B deficiency, an evaluator may need to discuss the situation with his/her Local Unit Manager.

If an evaluator is unable to complete the LIC 809 by the end of the visit, he/she must leave at the center an LIC 809 signed by the licensee/administrator (or person in charge) that states the date and purpose of the visit and clearly documents that:

- (1) Deficiencies were discussed during the exit interview.
  - (2) An appointment is to be scheduled, either in the center or at the Regional Office, to review the LIC 809 and determine plans of correction. An attempt should be made to schedule the appointment not more than 2 working days past the date of the evaluation visit.
- 

(d) **POLICY**

The most appropriate regulatory section from Title 22, or the most appropriate statutory section from the Health and Safety Code, shall be cited on the LIC 809.

**PROCEDURE**

Complete the top section on the first page of the LIC 809. This includes the time entering and exiting the center, and the address and telephone number of the appropriate licensing office. The additional pages should show the facility name and page reference.

## 101193 DEFICIENCIES IN COMPLIANCE (Continued)

101193

**PROCEDURE** (Continued)

Clearly number and separate each deficiency. This allows for clear reference to the violation when issuing citations or securing plans of correction. After numbering the deficiency and giving the reference, briefly paraphrase, quote or explain the section that is being violated. If the code section can be easily quoted, state directly what the regulation requires. If the regulation is not easily quoted, paraphrase--using caution that your explanation does not alter the intent of the regulation.

Following the number code section and the explanation of the regulation, describe the deficiency with reasonable specifics--who, what, where and to what extent. If you are citing multiple deficiencies that pertain to the same regulation, group them together rather than documenting each one separately. When grouping a number of deficiencies that apply to a section and its subsections, identify each subsection.

Discuss and develop a reasonable Plan of Correction with the licensee/administrator. Clearly explain how and when each deficiency must be corrected following each citation.

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(d)(4)(D)

**PROCEDURE**

After considering the factors identified in (4)(A)(1) through (4) above, it may be necessary to establish interim corrective steps to achieve a final correction due date that is fair and reasonable. For example, a licensee may be cited for damaged floor coverings throughout the center. Due to inconvenience to children, and the time necessary for delivery and installation of new carpets and linoleum, interim due dates may be established for specified rooms.

The licensee may request a review of a licensing decision (See Section 101196). As a result of this review, the Regional Manager (or designee, who is at a higher staff level than an evaluator) may uphold, amend or dismiss the licensing decision. The evaluator is not authorized to make these decisions. The licensee's request should be made in writing within ten days of receipt of the Facility Evaluation Report (LIC 809) or the Facility Civil Penalty Assessment (LIC 421). The Penalty Review (LIC 178) is sent to the licensee as official notification of the administrative review.

There will be occasions when, because of the deficiency cited, the licensee will be unable to immediately provide a Plan of Correction. For example, your tour of a child care center reveals that the roof is leaking. The licensee states that he or she cannot provide a Plan of Correction before talking to a contractor. As an interim Plan of Correction, you may choose to require that within 10 days the center secure a contractor and specify a reasonable completion date for the repair of the roof.

**101193 DEFICIENCIES IN COMPLIANCE (Continued)****101193**

(d)(4)(D)

**PROCEDURE (Continued)**

Point out to the center that the more specific the Plan of Correction the easier it is to jointly identify a reasonable correction date and the less chance there is for any misunderstanding when you return to determine if the deficiency has been corrected.

**NOTE:** Health and Safety Code Section 1597.05(b) states: “A licensee shall have 30 days after the employment of a staff person or enrollment of a child to secure records requiring information from sources not in the control of the licensee, staff person, or child.” These records include, but are not limited to, physical examination reports, immunization reports and director/teacher transcripts. Accordingly, because no record-keeping deficiency exists until the 31st day after employment or enrollment, no citation of deficiency can be issued prior to that time.

(d)(5)

**POLICY**

Licensing regulations require you to issue a notice of deficiency during the licensing visit when civil penalties are involved. In issuing the notice, you must state on the LIC 809 whether the violation is a Type A or a Type B deficiency, the amount of the penalty if the deficiency is not corrected, and the date the penalty begins. (See Reference Material Section 1-0040 through 1-0070.)

Reference Material Section 1-0040 through 1-0070 specifies the categories of civil penalties, progressive civil penalties for repeat violations and maximum per day civil penalty assessments.

**PROCEDURE**

Attempt to set common correction dates. This is not always possible when Type A deficiencies that require immediate (24-hour) correction are involved. If you determine that there are no Type A deficiencies and establish a single plan-of-correction date, you may write, “All deficiencies must be corrected by (the specific date) or be subject to civil penalties. Civil penalties shall be assessed in accordance with Reference Material Section 1-0040 through 1-0070.”

**101194 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE****101194**

(a)

**PROCEDURE**

The Facility Evaluation Report (LIC 809) is used when following up on a Plan of Correction. Your follow-up visit shall be made not later than ten working days after the latest Plan of Correction date established during your original visit. You may need to schedule an earlier follow-up visit when Type A deficiencies requiring immediate (24-hour) correction have been cited. When your follow-up visit verifies that deficiencies have been satisfactorily corrected, you clear the Plan of Corrections by stating on the LIC 809 how the corrections were made and that “no civil penalty [was] assessed.”

**101194 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE**  
(Continued)**101194**

(c)

**PROCEDURE**

When a civil penalty is assessed, reference the report to the original notice stating: "Deficiencies listed below have not been corrected by the Plan of Correction date on the of Facility Evaluation Report (date). See previous report for details." List all of the uncorrected deficiencies by number, regulation code and section(s) that correspond to the original LIC 809. Then briefly explain why the deficiencies were not corrected. You are then ready to issue the Facility Civil Penalty Assessment (LIC 421).

The purpose of the LIC 421 is to indicate to the licensee and the Regional Office the exact date the penalty began and the amount owed at the time of the visit. Enter the date of the visit in the upper left-hand corner of the LIC 421. In establishing the dates covered by the penalty, the penalty begins the day following the Plan of Correction date and includes the day of your visit. If, for example, the correction on a Type A or Type B deficiency (\$50) was due on the first of the month and your visit was on the fifth, the penalty would be assessed for the second through the fifth in the amount of \$200 with \$50 per day thereafter to continue until correction is made.

At the conclusion of the follow-up visit, complete the following forms:

1. Facility Evaluation Report (LIC 809) and any supporting documentation.
2. Facility Civil Penalty Assessment (LIC 421) (not needed if all corrections have been completed).

The evaluator is to complete the LIC 421 during the site visit. The LIC 421 is to be completed in its entirety, describing those regulatory sections and/or Health and Safety Code sections that have been violated. Be sure to accurately complete that portion of the form that sets the amount of the initial penalty and documents the period of time for which the penalty is assessed.

The beginning date for the assessment is the day following the Plan of Correction date (date by which the deficiency was to be corrected). The second date shown is the date of the follow-up visit. This date should be the same as the date the LIC 421 is prepared. These dates are important for use by clerical staff in setting up the facility penalty ledger for billings.

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## 101195 PENALTIES

101195

(d)

**PROCEDURE**

At any time during the penalty assessment process, the Department may request a noncompliance conference (Reference Material Section 1-0300)–and Section 101194) with the licensee for the purpose of establishing a Plan of Correction date and a plan for achieving compliance. If no notice of correction has been received from the licensee by the end of the 30-calendar-day assessment period, a follow-up visit shall be scheduled as soon as possible. This visit is for the purpose of determining if deficiencies have been corrected.

The following describes three general situations you may encounter and the appropriate action to take.

**Situation #1**

At the time of the follow-up visit, if the deficiencies have been corrected, complete an LIC 809 documenting the visit and that the deficiencies have been corrected. The evaluator is not required to take any further action on these deficiencies. However, the licensee is liable for any penalties that have accrued for 30 calendar days, or until the date the deficiencies were corrected and verified (See Section 101195(e)), whichever is the earlier date. (See Section 101194(c) for explanation of Collection Procedures.)

**Situation #2**

The follow-up visit at the center indicates that the licensee has not corrected the deficiencies but is able to verify that corrective action is in progress (e.g., the licensee has a contract for the work to be done and/or related receipts). In this situation, prepare an LIC 809 stating the action taken thus far by the licensee to comply with the regulations and establishing a new Plan of Correction date. The new Plan of Correction date should be realistic based on the licensee's ability to comply with the regulations. For example, if window glass is on order and will be available in 2 weeks, establishing a Plan of Correction date of one week is not realistic. But in no case can the Plan of Correction date be longer than 30 calendar days (except as specified in Sections 101193(d)(4)(B) and (C)).

Visit the center within ten days of the above Plan of Correction date to ensure compliance (see Section 101194). If the licensee has corrected the deficiency, the evaluator is not required to take further action on the deficiency. But the licensee is responsible for all penalty assessments accrued. (See Section 101194(c) for an explanation of collection procedures.) If the licensee fails to meet this second Plan of Correction date, the procedure described below is to be followed.

**Situation #3**

At the time of the follow-up visit, if the deficiencies have not been corrected and the licensee has demonstrated no effort to comply, or if the licensee has failed to comply with the second Plan of Correction date, the procedure below must be followed:

(d) **PROCEDURE (Continued)**

Document on the LIC 809 the center’s failure to comply with the Plan of Correction date and again cite the center for noncompliance, following the requirements of Section 101193. Assessment of penalties **cannot** begin until a site visit is conducted, a new Plan of Correction date is established, etc. If the new Plan of Correction date is not met, another penalty assessment period must begin, which cannot run longer than 30 days.

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(f) **PROCEDURE**

Once civil penalties have been assessed, it is the licensee’s responsibility to notify the Regional Office that the corrections have been made. This notification need not be in writing. If it is necessary to make a site visit to verify corrections, the visit must be made within five working days of notification. Upon verifying the correction(s), the total amount of the fine is computed from the date following the Plan of Correction date through the date the licensee notified the office.

When a licensee notifies the Regional Office that deficiencies have been corrected, document the date and summarize the information received on the Contact Sheet (LIC 185). It may be necessary to schedule a site visit to verify the correction(s).

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(j) **POLICY**

Civil penalties may be paid in installments. All requests for an installment payment shall be in writing. Inquiries and/or verbal requests made by telephone shall be documented on the Contact Sheet (LIC 185) and placed in the facility file. The licensee (or designee) shall be advised to follow up the telephone/verbal request to the Department with a written request.

**PROCEDURE**

If the licensee (or designee) requests a noncompliance conference, the conference shall be documented on the Facility Evaluation Report (LIC 809) according to established procedures. (See Reference Material Section 1-0300)

The Regional Office Manager (or designated staff) shall document the following:

1. Basis for approval or denial of the request;
2. If approved, the established installment schedule, amount of payment and due dates.

(j) **PROCEDURE (Continued)**

Civil penalty assessments shall be cleared within a 2-month payment schedule. However, if this payment schedule would impair the provision of the level of care and supervision as required by regulation, the Regional Manager (or designated staff) may approve an extended payment schedule. The extended payment schedule shall not exceed a total of four months unless approval to further extend the payment schedule is obtained from the Child Care Program Administrator.

Installment payments of not less than \$50 per month must be made to avoid further action by the Department, such as referral to Small Claims Court.

Written confirmation of the approved/denied installment payment request shall be sent to the licensee.

Forward all documentation to the clerk for processing of the Notice of Civil Penalties Due (LIC 422).

The Contact Sheet (LIC 185) and the licensee's letter or the LIC 809 shall be forwarded to the Regional Manager (or designated staff) for review and approval or denial.

The Regional Manager (or designated staff) shall apply the following standards when establishing a civil penalty installment payment schedule:

1. The amount of the outstanding civil penalty assessment must be \$50 or more; and, in addition, at least one of the following shall exist:
  - a. The source(s) of income and/or available resources of the licensee demonstrate an inability to make the payment as assessed; or
  - b. The payment of the total outstanding civil penalty assessment due adversely impacts the level of care and supervision.

---

(k) **PROCEDURE**

Advise your Local Unit Manager and clerk of the status of the penalty. In the event the licensee fails to pay the assessment, appropriate steps shall be taken to secure a judgment in Small Claims Court. If it becomes necessary to go to Small Claims Court, discuss the methods and format of your presentation to the court with your Local Unit Manager.

The appropriate forms to file a claim are available by either calling or writing the appropriate Small Claims Court. Normally you will file with the court located in the district where the defendant lives.

## 101195 PENALTIES (Continued)

101195

(k)

## PROCEDURE (Continued)

Prior to filing suit with the Small Claims Court, ensure that a final notice is sent to the licensee notifying them of the following: (1) the total amount due; and 2) that if the debt is not cleared, or arrangements made for payment, Small Claims Court proceedings will be initiated. The Notice of Civil Penalties Due (LIC 422) shall be used for this purpose. The evaluator must ensure that the amount entered on the LIC 422 as "Balance Due" is the exact amount for which the licensee will be sued in Small Claims Court. The LIC 422 **must** state that it is the **final notice** and that failure to clear the debt will result in Small Claims Court action.

It is recommended that Small Claims Court action be initiated within 30 days from the date the final notice was sent to the licensee. However, Small Claims Court action **must be initiated** within one year of the date that civil penalty assessments began. That is, if a civil penalty was assessed beginning June 5, 1985, action must be taken by June 4, 1986. It is necessary to file with the court within one year because civil penalties are limited to a one-year statute of limitations. This means that if Small Claims Court action is initiated **after** this one-year period, the licensee can raise as a defense the fact that the statute of limitations has run out--and the case will be dismissed on that basis.

See Evaluator Manual Reference Material Section 2-7000 for procedures on collection of civil penalties.

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101196 REVIEW OF LICENSING DECISIONS

101196

(c)

## PROCEDURE

The Regional Manager's delegate will act as reviewer and may uphold, amend or dismiss the licensing decision. The reviewer may also extend the correction date. However, granting an extension should be the exception--and such an extension should be granted only when there is evidence that correction delays are beyond the control of the licensee.

Upon completion of the review, a Penalty Review (LIC 178) is drafted, which notifies the licensee of action taken on his/her appeal. A copy of the LIC 178 is kept in the facility file.

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## (a) POLICY

Health and Safety Code Section 1596.853 requires the Community Care Licensing Division to notify child care resource and referral agencies funded by the California Department of Education, Child Development Division, of the following:

1. Denial, revocation or Temporary Suspension Order actions, when issued against child care facilities; and
2. Cases of physical or sexual abuse within 24 hours of substantiation; and
3. Final resolution of both of the above.
4. The Department is to notify California Department of Education's Child Development Division of substantiated serious allegations against facilities funded by the Child Development Division.

## PROCEDURE

1. When any of the above conditions exist, ascertain if the facility or the Resource and Referral is funded by California Department of Education. (The Child Care Advocates have information in each area.)
2. The notification to the California Department of Education required in #4 above will only be done when there is a denial, revocation or Temporary Suspension Order issued against a California Department of Education-funded facility.
3. To notify Resource and Referrals and the California Department of Education of denial, revocation or Temporary Suspension Order actions, follow the procedures set forth in Sections 101206 and Reference Material Section 1-1260 related to notification of placement agencies, etc.
4. In situations where physical or sexual abuse have been substantiated, send a copy of the LIC 809 or other appropriate public document--which must at a minimum include the substance of the complaint and the results of the investigation--to the Resource and Referral within 24 hours of substantiation. When appropriate, be sure to keep the Resource and Referrals and the California Department of Education informed via letter of any appeals, etc., that may affect the outcome and final resolution of the case.
5. Coordination with the Child Care Advocate Program may be considered; however, the 24-hour notification requirement **must** be met.
6. When cases have been referred to Child Care Program Investigations, Child Care Program Investigations will contact the appropriate Regional Office--which will report to the Resource and Referral and/or the California Department of Education as required.

**Notification is not required if California Department of Education funding is solely through the Office of Child Nutrition (food service).**

**101201 EVALUATION VISITS****101201**

(a)

**POLICY**

For proper identification when visiting child care centers, all evaluators are to obtain a picture identification card issued by the State. Until this picture identification card is received, a letter of introduction on California Department of Social Services letterhead or an official state business card is acceptable.

An evaluation visit is required within 120 days of the anniversary date of the license. (See Reference Material Section 3-1530.)

A site visit for the sole purpose of checking for the completion of record-keeping deficiencies shall not be made if the child care center can mail copies of completed records to the Regional Office to satisfy the terms of the Plan of Correction. Continue to develop Plans of Correction and schedule follow-up site visits for all other deficiencies according to current procedures. (See Reference Material Sections 3-3600 and 3-3700.)

**PROCEDURE**

Refer to Reference Material Sections 3-1400, 3-3100 and 3-4000.

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## ARTICLE 5 ADMINISTRATIVE ACTIONS

## 101205 DENIAL OF INITIAL LICENSE

101205

(a)

## POLICY

**NOTE:** The following is a list of some common conditions that may necessitate the denial of the application:

1. Failure to meet regulations for securing fire, health and sanitation clearances.
2. A history of criminal conviction with insufficient evidence of rehabilitation. (See Section 101170(g).)
3. The proposed physical plant does not meet the requirements.
4. The applicant fails to follow through with the application process.
5. Substantiation of the Child Abuse Index Check information.

## PROCEDURE

When it is determined that an application will be denied, applicants shall not be given the option to withdraw the application prior to the denial action. In this circumstance, the Department shall not consent to a request to withdraw an application. If the Department accepts a withdrawal of the application in writing, the Department cannot proceed with any administrative action on the case. The decision and order resulting from an administrative hearing serves to officially document and record the denial. Health and Safety Code Section 1596.95(e) provides that the applicant must disclose previous disciplinary actions taken against him/her. Health and Safety Code Section 1596.851 provides for certain Community Care Licensing Division action based on past revocations if the individual applies for a license again. It is important, therefore, to record the denial actions for future reference. This process does not apply when an applicant withdraws his/her application and, at the time of the withdrawal action, the Department had no grounds for a license denial action. (See Section 101180)

**101205 DENIAL OF INITIAL LICENSE (Continued)**

**101205**

**PROCEDURE (Continued)**

Review all applications that appear headed for denial with your Local Unit Manager. All denial actions must be fully documented and substantiated. The importance of this cannot be **overemphasized**. Reference Material Section 1-1130 outlines the documentation requirements for denial. Upon compiling the necessary documentation and consultation, a Notification of Initial Application Denial (LIC 192), over the Regional Manager’s signature, will advise the applicant in writing that the application is denied and inform him/her of the specific regulations that were not met. The Department shall send all denial letters by certified mail. A copy of the denial letter is sent to the Child Day Care Program Administrator. The denial letter further informs the applicant that the denial can be appealed within 15 days.

If the applicant appeals the denial, the Child Day Care Program Administrator acknowledges receipt of the letter and advises the applicant that an administrative hearing will be scheduled. A copy of the acknowledgment letter is sent to the Regional Office, where a Statement of Facts is prepared. The Child Day Care Program Administrator will initiate the steps necessary for an administrative hearing to review the denial action. You may be required to testify during this hearing. The documentation you previously gathered will be used to show why the denial action was justified. If the applicant does not file, a Notice of Defense, the denial is complete and no further action is needed other than verifying that the facility is not operating. (See Section 101157 and Reference Material Section 1-1140 through 1-1195.)

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**101206 REVOCATION OR SUSPENSION OF A LICENSE**

**101206**

(a) **POLICY**

The Community Care Licensing Division is to notify child care resource and referral agencies funded by the California Department of Education, Child Development Division, of the following:

1. Revocation or Temporary Suspension Order actions, when issued against child care centers; and
2. Cases of physical or sexual abuse within 24 hours of substantiation; and
3. Final resolution of both of the above.
4. The Department is to notify the California Department of Education’s Child Development Division of substantiated serious allegations against facilities funded by the Child Development Division.

## 101206 REVOCATION OR SUSPENSION OF A LICENSE (Continued)

101206

## (a) POLICY (Continued)

**Notification is not required if the California Department of Education funding is solely through the Office of Child Nutrition (food service).**

In addition, within 2 working days of receipt by the Department's legal staff of evidence that a death or serious injury was due to abuse or willful neglect, the Department must temporarily suspend the facility's license, registration or special permit.

For purposes of the 2-day Temporary Suspension Order requirement, this statute defines serious injury as a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily limb or organ, a wound requiring extensive suturing, and serious disfigurement.

**NOTE:** This requirement only applies to death or the above specific physical injuries.

Health and Safety Code Section 1596.8895 requires that written notification of a Temporary Suspension Order be sent to the authorized representative of each child receiving services in the facility. In addition, the Department shall post a notice of the Temporary Suspension Order at the facility site in an area that is readily visible and accessible to authorized representatives of children in care. Removal of this posted notice while the Temporary Suspension Order is in effect is punishable by a \$500 fine.

## (a) PROCEDURE

Procedure for notification of Resource and Referrals and California Department of Education:

1. When any of the above conditions exist, ascertain if the facility or the Resource and Referral is funded by the California Department of Education. (The Child Care Advocate has this information.)
2. The notification of the California Department of Education required in #4 above will only be done when there is a denial, revocation or Temporary Suspension Order issued against a California Department of Education-funded center.
3. To notify Resource and Referrals and the California Department of Education of denial, revocation or Temporary Suspension Order actions, follow the procedures set forth in Sections 101205 and 101206 and in the Reference Material Section 1-1260 related to notification of placement agencies, etc.
4. In situations where physical or sexual abuse have been substantiated, send a copy of the Facility Evaluation Report (LIC 809) or other appropriate public document--which must include at a minimum the substance of the complaint and the results of the investigation--to the Resource and Referral within 24 hours of substantiation. When appropriate, be sure to keep the Resource and Referrals and California Department of Education informed via letter of any appeals, etc., that may affect the outcome and final resolution of the case.

## 101206 REVOCATION OR SUSPENSION OF A LICENSE (Continued)

101206

## (a) PROCEDURE (Continued)

5. Coordination with the Child Care Advocate Program may be considered; however, the 24-hour notification requirement **must** be met.
6. When cases have been referred to the Central Operations Branch Audits Section, Central Operations Branch Audits will contact the appropriate Regional Office, which will report to the Resource and Referral and/or California Department of Education as required.

**Procedure for Expedited (2-Day) Temporary Suspension Orders**

1. Temporary Suspension Orders involving death or serious injury, as defined above, are given top priority.
2. Upon receipt of evidence substantiating that the death or serious injury (a) occurred at the facility **and** (b) was due to licensee or facility staff abuse or willful neglect, the Regional Office shall **immediately** forward all appropriate documentation to the Child Care Program Office. The Child Care Program Office shall **immediately** review and forward the documentation to Legal for action.
3. Legal will evaluate the material and prepare a Temporary Suspension Order within 2 days of receipt if legal staff believe the evidence will support the action.

**Procedure for Temporary Suspension Order Notice**

In addition to existing Temporary Suspension Order procedures, a copy of the Temporary Suspension Order notice will be sent to each authorized representative. A letter may be used in place of a copy of the Temporary Suspension Order; however, the letter **must be approved** by Legal prior to release.

A copy of the Temporary Suspension Order notice or approved letter will be posted by the Department at the facility's main entrance where authorized representatives drop off and pick up children. If you observe the removal of this notice, contact the local law enforcement agency for issuance of a citation for said removal.

See Section 101186(a) for forfeiture of license conditions and procedures.

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**ARTICLE 6 CONTINUING REQUIREMENTS**

**101212 REPORTING REQUIREMENTS**

**101212**

(c) **POLICY**

In most cases, swimming pools, room additions, enclosures, etc., added after establishing a maximum indoor or outdoor capacity will reduce the available square footage and result in lowered licensed capacities.

**PROCEDURE**

Emphasize the importance of this subsection during orientation sessions and at other opportunities during initial licensure.

See Section 101237.

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**101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS  
AND DUTIES**

**101215.1**

(d) **POLICY**

The Department may require a child care center director to increase the amount of time he or she spends at the center if it is determined that the absence of the director has a detrimental effect on the center's operation.

**PROCEDURE**

Review center records and, if appropriate, interview staff to determine whether or not the director is at the center and is spending enough time operating and managing the center. Document findings on the Facility Evaluation Report (LIC 809).

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(h)(1) **POLICY**

References must be used to verify experience.

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**101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS AND DUTIES (Continued) 101215.1**

(h)(4)

**POLICY**

Effective February 1, 1997, the California Commission on Teacher Credentialing adopted a new Child Development Permit with six levels. The Department recognizes the new permit as acceptable for meeting Title 22 staff qualifications requirement.

**PROCEDURE**

Accept the Child Development Site Supervisor Permit or the Child Development Program Director Permit as meeting Title 22 staff qualifications requirements for directors.

**POLICY**

Education Code Section 8208 states:

- (z)(1) *“Site supervisor” means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.*
- (z)(2) *In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.*

Education Code Section 8208 states:

- (u) *“Program director” means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.*

101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS  
AND DUTIES (Continued)

101215.1

## POLICY (Continued)

Accordingly, Education Code Section 8244 states:

- (a)(1) *Any entity operating child care and development programs funded pursuant to this chapter that provide direct services to children at 2 or more sites, including through more than one contract or subcontract funded pursuant to this chapter, shall employ a program director.*
- (a)(2) *Programs providing direct services to children, for the purposes of this section, are general child care and development programs pursuant to Article 8 (commencing with Section 8240), migrant child care and development programs pursuant to Article 6 (commencing with Section 8230), campus child care and development programs pursuant to Article 4 (commencing with Section 8225), state preschool programs pursuant to Article 7 (commencing with Section 8235), child care and development services for children with special needs programs pursuant to Article 9 (commencing with Section 8250), infant care and development services programs pursuant to Article 17 (commencing with Section 8390), and any of these programs operated through family child care homes.*
- (b)(1) *For purposes of this section the following definitions shall apply:*
  - (A) *“Administrative responsibility” means awareness of the financial and business circumstances of the program, and, in appropriate cases, supervision of administrative and support personnel and the knowledge and authority to direct or modify administrative practices and procedures to ensure compliance to administrative and financial standards imposed by law.*
  - (B) *“Program director” means a person who, regardless of his or her title, has programmatic and administrative responsibility for a child care and development program that provides direct services to children at 2 or more sites.*

101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS  
AND DUTIES (Continued)

101215.1

## POLICY (Continued)

- (C) *“Programmatic responsibility” means overall supervision of curriculum and instructional staff, including instructional aides, and the knowledge and authority to direct or modify program practices and procedures to ensure compliance to applicable quality and health and safety standards imposed by law....*
- (c) *The program director also may serve as the site supervisor at one of the sites, provided that he or she both fulfills the duties of a “day care center director,” as set forth in Section 101315 of Title 22 of the California Code of Regulations, and meets the qualifications for a site supervisor as set forth in subdivision (aa) of Section 8208.*
- (d) *The Superintendent of Public Instruction may waive the qualifications for program director described in Sections 8360.1 and 8360.3 upon a finding of the following circumstances:*
- (1) *The applicant is making satisfactory progress toward securing a permit issued by the Commission on Teacher Credentialing authorizing supervision of a child care and development program operating in 2 or more sites or fulfilling the qualifications for program directors in severely handicapped programs, as specified in Section 8360.3.*
- (2) *The place of employment is so remote from institutions offering the necessary coursework as to make continuing education impracticable and the contractor has made a diligent search but has been unable to hire a more qualified applicant.*

101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS  
AND DUTIES (Continued)

101215.1

## POLICY (Continued)

- (e) *The Superintendent of Public Instruction, upon good cause, may by rule identify and apply grounds in addition to those specified in subdivision (d) for granting a waiver of the qualifications for program director.*

Education Code Section 8360.1 states:

*Except as waived under Section 8242 and except as stated in Section 18203 of Title 5 of the California Code of Regulations regarding program directors in schoolage community child care services programs, any entity operating child care and development programs providing direct services to children, as defined in Section 8244, at 2 or more sites, shall employ a program director who possesses one of the following:*

- (a) *A permit issued by the Commission on Teacher Credentialing authorizing supervision of a child care and development program operating in multiple sites.*
- (b) *Any person who meets the following criteria is eligible to supervise a child care and development program operating in multiple sites and serve in an instructional capacity in a child care and development program:*
- (1) *Possesses a current credential issued by the Commission on Teacher Credentialing authorizing teaching experience in elementary school or a single subject credential in home economics.*
  - (2) *Six units in administration and supervision of early childhood education or child development, or both. The requirement set forth in this paragraph does not apply to any person who was employed as a program director prior to January 1, 1993, in a child care and development program receiving funding under this chapter.*

101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS  
AND DUTIES (Continued)

101215.1

## POLICY (Continued)

- (3) *Twelve units in early childhood education or child development, or both, or at least 2 years' experience in early childhood education or a child care and development program.*
- (c) *A waiver issued by the Superintendent of Public Instruction pursuant to Section 8244.*

This section shall become operative on January 1, 1997.

In addition, the California Department of Education, Child Development Division's (California Department of Education-Child Development Division) Funding Terms and Conditions, Child Care and Development Programs (which are applicable to preschool programs), Section VI. Staffing Qualifications, states in part:

A. *Program Director*

*If the contractor operates at 2 or more sites, the contractor shall employ a program director who has administrative and programmatic responsibility for the program. The program director shall hold a children's center supervision permit, or its equivalent, as specified in Education Code Section 8360.1 or shall hold a waiver of these requirements issued by the Superintendent of Public Instruction. The Superintendent of Public Instruction may issue this waiver if the superintendent determines that the contractor has documented a compelling need to do so and that the candidate has satisfied any additional criteria required by statute.*

B. *Site Supervisor*

*At each site there shall be a person designated as the site supervisor who has operational program responsibility for the program. A site supervisor shall meet the qualifications specified in Title 22 California Code of Regulations, Community Care Licensing Standards for "program director" and shall hold a regular children's center instructional permit and shall have completed not less than six units of administration and supervision of early childhood education or development, or both.*

*The Child Development Division shall grant a waiver of this requirement upon a contractor's demonstration of the existence of compelling need. Factors the Child Development Division shall consider in determining compelling need are as follows:*

**101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS  
AND DUTIES (Continued)****101215.1****POLICY (Continued)**

*(1) evidence that the contractor's recruitment efforts have not been successful in obtaining qualified applicants; (2) evidence of the contractor's inability to offer competitive salaries and/or (3) evidence of potential or current staff's lack of reasonable access to training resources which offer required course work.*

*However, the site supervisor shall, at a minimum, meet the qualifications specified in Title 22 California Code of Regulations, Community Care Licensing Standards for "program director."*

Relative to Title 22, Health and Safety Code Section 1596.8716(b) states:

*For licensing purposes, a school principal of a public school that operates a child care and development program under contract with the State Department of Education pursuant to Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of the Education Code shall be deemed qualified to be a day care center director pursuant to Section 101315 [now Section 101215.1] of Title 22 of the California Code of Regulations only when the program is located on the campus of an operating public school, with staff who are employees of the public school.*

In addition, as indicated in the previously cited Education Code Section 8360.1, a director of a state preschool program may qualify by having a permit issued by the Commission on Teacher Credentialing authorizing supervision of a child care and development program operating in multiple sites, OR by meeting the following criteria:

1. He or she must possess a current credential issued by the Commission on Teacher Credentialing authorizing teaching experience in elementary school or a single subject credential in home economics; AND
2. He or she must have six units in administration and supervision of early childhood education or child development, or both. The requirement set forth in this paragraph does not apply to any person who was employed as a program director prior to January 1, 1993, in a child care and development program receiving funding under this chapter. He or she must have 12 units in early childhood education or child development, or both, or at least 2 years' experience in early childhood education or a child care and development program.

**101215.1 CHILD CARE CENTER DIRECTOR QUALIFICATIONS  
AND DUTIES (Continued)**

**101215.1**

**POLICY (Continued)**

The regulations do not address the distances buildings must be from one another to be considered “onsite.” We interpret “onsite” to mean buildings on the same grounds, with one address as one site. The intent is to assure that the director is readily accessible and able to attend to the needs of the child care center. Therefore, the principal can be in another building and still be “onsite.”

(h)(4)

**PROCEDURE**

To verify that the individual is the school principal, review appropriate documentation, which shall include, but not be limited to, copies of the Administrative Credential, the Administrative Services Credential, a letter from the school stating the individual is the principal, etc.

A director of a state preschool program who qualifies under Education Code Section 8360.1 shall be required to submit documentation that he/she meets the specified provisions. Such documentation shall include copies of transcripts verifying the 12-unit requirement, letters of experience, etc. Use the exception process for approving a state preschool director who qualifies under Education Section 8360.1.

If the state preschool program is in a building on a school site, and if the school principal is also the state preschool program director, a citation for no “on-site” director is not appropriate and shall not be made even though the principal may not be in the preschool area. Citations are only issued for the violation of regulations. If the director does not carry out the duties and functions specified in Sections 101215 and 101215.1, then it is appropriate to cite.

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(i)

**POLICY**

All state universities have an international programs office that may be contacted to determine the status of foreign colleges and universities (e.g., accredited, recognized, etc.). Translations may also be obtained if the office is staffed with someone who has the needed language background.

101215.1 CHILD CARE CENTER DIRECTORS QUALIFICATIONS  
AND DUTIES (Continued)

101215.1

## (i) POLICY (Continued)

If the needed translator is not available at a specific campus, any of the other campuses statewide may be contacted to locate the needed translator. This service is free of charge to the general public as well as to organizations.

An alternative location for obtaining translations only is the California Department of Social Services Language Services Bureau, 744 P Street, Room 1440 (MS 14-24), Sacramento, California, 95814, ATSS 8- 473-9562 or (916) 323-9562. This office will do one of 2 things:

1. Provide a written translation of all necessary documents if the office is staffed with the needed translator; or
2. Notify you if the needed translator is not available. At your request, the office will then secure the services of a consultant translator. This service is available for a fee that is determined by the consultant and paid for by the requestor (e.g., Community Care Licensing Division, etc.). To secure these services, you must attach to the transcript a memorandum requesting the service and forward it to the above address. The memorandum must include your **unit code** for billing purposes, the **needed service**, and a **designated contact person** should the Language Services Bureau have any questions. Generally, the fee runs about \$25 for the first page and \$20 for each subsequent page.

Since neither the California State University nor the University of California systems accepts certificates of completion from non-accredited Montessori institutions (including California Department of Education-approved institutions), neither will be able to provide you with any assistance in this area. However, a third alternative for obtaining translations and determining the status of foreign educational institutions (including Montessori institutions) is to contact the International Education Research Foundation, Credentials Evaluation Service, P.O. Box 3665, Culver City, California, 90231-3665. Phone: (310) 258-9451; Fax: (310) 342-7086, e-mail: [info@ierf.org](mailto:info@ierf.org), website: [www.ierf.org](http://www.ierf.org). The amount of the fee varies, ranging from \$75 to \$300.

The above director qualifications also apply to programs funded by California Code of Regulations Title 5.

This information is to direct you to resources necessary in determining acceptability of course work completed at educational institutions outside California and the United States. Additionally, resources are identified where translations of documents in foreign languages may be obtained.

**101215.1 CHILD CARE CENTER DIRECTORS QUALIFICATIONS  
AND DUTIES (Continued)****101215.1****(i) POLICY (Continued)**

It is incumbent upon the applicant/licensee to provide all necessary documentation to verify staff qualifications involving course work completed at foreign schools, including Montessori institutions. The applicant/licensee must provide proof that the foreign school where the course work was completed is a bona fide school. Such proof may include documentation from a local governmental agency in the area where the institution is located. Therefore, the following information should be made available to the applicant/licensee as necessary.

The American Montessori Society, 281 Park Avenue South, Sixth Floor, New York, New York, 10010, (212) 358-1250, is another source to which you should direct applicants/licensees regarding certificates of completion issued by Montessori institutions.

The certificate of completion must be accompanied by course descriptions so that you can determine whether appropriate course work has been completed. Remember that if the person is applying for a position as a director, he or she must provide proof of having completed course work in administration or staff relations. In addition, specific courses (as detailed in the regulations) are required for teacher qualifications as well. Again, it is incumbent upon the applicant/licensee to provide proof that he or she complies with all standards.

Each situation will require individual handling. It is recommended that the applicant/licensee do the legwork, particularly when a fee is involved.

**(i) PROCEDURE**

Use the exception process to track completion of the required course work.

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**101216 PERSONNEL REQUIREMENTS**

**101216**

(c) and (d)

**POLICY**

Licenses may use volunteers under 18 years of age as long as these volunteers do not provide direct care and supervision to children, are not used to supplement staff, and are under the constant supervision of a teacher/director. Further, these volunteers must affirm that they are in good health and present evidence of a recent tuberculosis test in accordance with Section 101216(g). Nothing in Title 22 would prohibit such a volunteer from being paid.

Examples of the above would include summer youth employment and high school and college intern programs. Even though these youths may be under 18 years of age and may or may not be paid for their services, they are not to be confused with teacher aides as specified in Section 101216.2.

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(g)

**POLICY**

For information on health-screening requirements for professionals who are generally employed by a school district (such as speech therapists) and who work alone with children with special needs, please see Issues 7 and 9 of the section on children with special needs under Evaluator Manual Section 101226 (Health- Related Services). This information also pertains to other employees of a school district.

The health screening shall be completed and signed by a physician or other health professional working under the direct supervision of a physician (e.g., a nurse practitioner or physician's assistant). The physician's evaluation shall certify that the person's general health is adequate to carry out required responsibilities. The Health Screening Report--Facility Personnel (LIC 503) is available for this purpose.

Child care centers operated by religious organizations which depend on prayer or other spiritual means for healing and that are subject to licensure shall be granted a waiver for Sections 101216(g), 101217(b), 101220, 101221(b)(7) through (10), and 101226(b), (c), and (e) under the following conditions:

1. The entire administrative staff are adherents of the particular religion.
2. All children admitted to the center are adherents of the religion.
3. All non-administrative staff who are not adherents of the religion are informed in writing by the center that all staff are covered by the waiver and, therefore, that other employees who are adherents of the religion have not been medically cleared for tuberculosis or other infectious diseases.

**101216 PERSONNEL REQUIREMENTS (Continued)**

**101216**

**(g) POLICY (Continued)**

Child care centers operated by religious organizations that do not meet the above conditions for a waiver--or any other center--may be granted individual exceptions to the above sections for any staff member or child who is an adherent of a well-recognized church that relies solely on prayer or other spiritual means for healing. Centers must present satisfactory evidence to the Department that any persons who need an exception are free from any communicable disease. Such evidence shall be a written statement from a practitioner recognized by the religion in question for the purposes of healing.

**101216.1 TEACHER QUALIFICATIONS AND DUTIES**

**101216.1**

**(b) POLICY**

Effective February 1, 1997, the California Commission on Teacher Credentialing adopted a new Child Development Permit with six levels. The Department recognizes the new permit as acceptable for meeting Title 22 staff qualifications requirements.

**PROCEDURE**

Accept the Child Development Assistant Permit as meeting Title 22 staff qualifications requirements for teachers (six units).

**(b)(1)(A) POLICY**

The director shall track completion of any remaining course work and shall require transcripts (or copies of transcripts) to verify successful completion.

**PROCEDURE**

Review director's documentation at time of site visit.

**(c)(1)(A) PROCEDURE**

Review the Personnel Record (LIC 501) and transcripts.

## 101216.1 TEACHER QUALIFICATIONS AND DUTIES (Continued)

101216.1

## (c)(1)(C) POLICY

References must be used to verify experience.

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## (c)(3) POLICY

Education Code Section 8360 states:

- (a)(1) *Child development programs shall include a career ladder program for classroom staff. Persons who are 18 years of age and older may be employed as aides and may be eligible for salary increases upon the completion of additional semester units in early childhood education or child development. The governing board of each contracting agency shall be encouraged to provide teachers and aides with salary increases for the successful completion of early childhood education or child development courses in six semester unit increments.*
- (a)(2) *Persons employed as teachers shall possess a permit issued by the Commission on Teacher Credentialing authorizing service in the care, development, and instruction of children in a child care and development program.*

In addition, according to Education Code Section 8360, any person who meets the following criteria is eligible to serve in an instructional capacity in a child care and development program:

- (b)(1) *Possesses a current credential issued by the Commission on Teacher Credentialing authorizing teaching service in elementary school or a single subject credential in home economics. [and]*
- (b)(2) *Twelve units in early childhood education or child development, or both, or 2 years' experience in early childhood education or a child care and development program.*

Education Code Section 8360.2 states:

*Not later than 95 days after the governing board of a public agency sets the date a person employed by that board shall begin service in a position requiring a children's center instructional permit or a children's center supervision permit, that person shall file, on or before that date, with the county superintendent of schools a valid permit issued on or before that date, authorizing him or her to serve in a position for which he or she was employed. Upon renewal of that permit, that person shall file that renewal with the county superintendent of schools no later than 95 days after the renewal.*

**101216.1 TEACHER QUALIFICATIONS AND DUTIES (Continued)****101216.1**

(c)(3)

**POLICY (Continued)**

In addition, the California Department of Education, Child Development Division Funding Terms and Conditions, Child Care and Development Programs (which are applicable to preschool programs), states in part that teachers shall have a valid instructional or teacher permit issued by the Commission on Teacher Credentialing, or shall meet the alternate requirements of Education Code Section 8360.

The requirements of Education Code Section 8360 are:

1. Possesses a current credential issued by the Commission on Teacher Credentialing authorizing teaching service in elementary school or a single subject credential in home economics; and
2. Has 12 units in early childhood education or child development, or both, or 2 years' experience in early childhood education or a child care and development program.

For Title 22 licensing requirements, the above excerpts from Education Code Section 8360 and the California Department of Education-Child Development Division Funding Terms and Conditions mean an individual may qualify as a teacher in a state preschool if he or she meets one of the following:

1. The requirements of Title 22, Sections 101216 and 101216.2; or
2. The alternate requirements of Education Code Section 8360 cited immediately above.

Teachers who meet the alternate requirements of Education Code Section 8360 must obtain an exception to Section 101216.1 in order to teach in a state preschool program.

These provisions are also apply to teachers in federal Head Start programs.

**PROCEDURE**

Use the exception process for approving persons who do not meet the requirements of Section 101216.1 as teachers in state preschool and federal Head Start programs.

Teachers qualify under the alternate requirements of Education Code Section 8360 must submit documentation that they meet the specified provisions. Such documentation should include copies of transcripts verifying the 12-unit requirement, letters of experience, etc.

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## 101216.1 TEACHER QUALIFICATIONS AND DUTIES (Continued)

101216.1

## (d) POLICY

This information is to direct you to resources necessary to determine the acceptability of course work completed at educational institutions outside California and the United States. Additionally, resources are identified where translations of documents in foreign languages may be obtained.

It is incumbent upon the applicant/licensee to provide all necessary documentation to verify staff qualifications involving course work completed at foreign schools, including Montessori institutions. The applicant/licensee must provide proof that the foreign school where the course work was completed is a bona fide school. Such proof may include documentation from a local governmental agency in the area where the institution is located. Therefore, the following information should be made available to the applicant/licensee as necessary.

All state universities have an international programs office that may be contacted to determine the status of foreign colleges and universities (e.g., accredited, recognized, etc.). Translations may also be obtained if the office is staffed with someone with the needed language background. If the needed translator is not available at a specific campus, any of the other statewide campuses may be contacted for a translator. This service is free of charge to the general public and to agencies.

A second alternative for obtaining translations only is the Language Services Bureau, MS 16-24, ATSS 8-464-1282 or (916) 654-1282, located in Sacramento. The Language Services Bureau will do one of 2 things:

1. Provide a written translation of all necessary documents if the bureau has a translator; or
2. Notify you if a translator is not available. At your request, the bureau will secure the services of a consultant translator. This service is available for a fee that is determined by the consultant and paid for by the requestor (e.g., Community Care Licensing Division, etc.). To secure these services, you must attach to the transcript a memorandum requesting the service and forward both to the above address. The memorandum must include your unit code for billing purposes, the **needed** service and a **designated contact person** should the bureau have any questions. Generally, the fee runs about \$25 for the first page and \$20 for each subsequent page.

**101216.1 TEACHER QUALIFICATIONS AND DUTIES (Continued)****101216.1**

(d)

**POLICY (Continued)**

Since neither the California State University nor the University of California systems accept certificates of completion from nonaccredited Montessori institutions (including California Department of Education-approved institutions), neither will be able to assist you in this area. However, a third alternative for obtaining translations and determining the status of foreign educational institutions, including Montessori institutions, is to contact the International Education Research Foundation, Credentials Evaluation Service, P.O. Box 3665, Culver City, California, 90231-3665. Phone: (310) 258-9451; Fax: (310) 342-7086, e-mail: [info@ierf.org](mailto:info@ierf.org), website: [www.ierf.org](http://www.ierf.org). The fee varies, ranging between \$50 and \$125.

The American Montessori Society, 281 Park Avenue South, New York, New York, 10010, (212) 358-1250, is another source to which you should direct the applicant/licensee regarding certificates of completion issued by Montessori institutions.

The certificate of completion must be accompanied with course descriptions so that you can determine whether appropriate course work has been completed. It is incumbent upon the applicant/licensee to provide proof that he or she complies with all standards.

Each situation will require individual handling. It is recommended that the applicant/licensee do the legwork, particularly when there is a fee involved.

**PROCEDURE**

Review the Personnel Record (LIC 501) and the Personnel Report (LIC 500) for the date of employment. A break in employment is considered any period of time during which a teacher is not actually employed in a child care center.

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**101216.2 TEACHER AIDE QUALIFICATIONS****101216.2**

For information on the responsibility of child care center staff over aides provided by a school and working in a center on a daily basis, please see Issue 8 of the section on children with special needs under Evaluator Manual Section 101226 (Health-Related Services).

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**101216.3 TEACHER-CHILD RATIO**

**101216.3**

(a) **POLICY**

The best way to demonstrate the intent of a ratio is to visualize a large indoor activity area where one teacher is supervising 15 children and another is supervising nine children. Direct, visual observation is maintained for each child, the overall ratio is met and the center is still able to group children based on their ages, abilities and activities. In separate rooms or smaller activity areas where teachers are not in contact with one another and visual observation of children cannot be shared among teachers, a minimum ratio of 1:12 is required.

**Head Start Programs**

Head Start regulations allow one teacher and 2 parent assistants per 20 children. However, Title 22 teacher-child ratios are to be applied.

**PROCEDURE**

Review the Personnel Report (LIC 500) and compare against licensed capacity.

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(c) **POLICY**

The California Department of Education, Child Development Division, recommends the following staffing patterns for programs funded by California Department of Education.

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<b>Category</b>	<b>Adult/Child</b>	<b>Teacher/Child</b>
Infants, 0 to 18 months old	1:3	1:18
Infants/toddlers, 18 months to 36 months old	1:4	1:16
Preschool, 36 months to enrollment in Kindergarten	1:8	1:24
School-age Enrolled in Kindergarten to 14 years old	1:14	1:28

**NOTE:** Adult/child ratio includes a teacher. A teacher must also possess a valid and current Child Development Teacher Permit or Child Development Master Teacher Permit.

**101216.3 TEACHER-CHILD RATIO** (Continued)**101216.3**(c) **POLICY** (Continued)

This means that for every group of 18 infants, which is the maximum number of infants per grouping, there must be six adults, of which one adult must be a teacher who possesses a valid and current Child Development Teacher Permit or Child Development Master Teacher Permit. This means that for each group of 18 infants, or fraction thereof, there must be one teacher.

**EXAMPLE:**

Infant group size is 24

24 infants  
~~-18~~ infants maximum group size = 1 teacher + 5 adults  
 6 infants = 1 teacher + 1 adult

Total required staff: 2 teachers plus 6 adults for 24 infants.

**PROCEDURE**

If understaffing is suspected in these centers, contact the California Department of Education's Child Development Division.

When a center is found to be out of compliance with the above staffing ratios, cite Section 101216.3(c) as your authority and use existing procedures for the LIC 809 process.

(e) **POLICY**

Persons on the substitute list must have a completed criminal record statement and fingerprint card on file at the center. The statement must be current. The statement and fingerprint card shall be forwarded to the Department within four days of the first day of work. (See Section 101170.)

**PROCEDURE**

Verify that the substitutes on the list have earned a minimum of six units in early childhood education or child development by review of their transcripts.

**101216.3 TEACHER-CHILD RATIO (Continued)**

**101216.3**

(h)(1) **POLICY**

The emergency use of such persons should not exceed one day.

**PROCEDURE**

Ensure that the licensee has arranged for a qualified teacher substitute. If use of clerical, housekeeping or maintenance staff is suspected, interview staff to determine the frequency of their participation in direct child care.

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**101216.6 STAFFING FOR WATER ACTIVITIES**

**101216.6**

(a) **POLICY**

A valid water-safety certificate is one that has been obtained from a recognized first-aid or life-safety organization, such as a state or county emergency service organization or the American Red Cross. It is not the intent of the regulation to require that an individual be competent as a water-safety instructor or lifeguard; rather, the intent is that the adult be able to swim and have basic skills in this area.

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(b)(1) **POLICY**

If there is a lifeguard on duty, it is not necessary to have a center staff person with a valid water-safety certificate present; however, the licensee must ensure the appropriate ratio of adults and/or staff present for general supervision.

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**101217 PERSONNEL RECORDS**

**101217**

(d)(1) **POLICY**

Staff records may be maintained in the Personnel Office or at a central administrative location provided they are readily available to licensing staff at the time of a site visit.

(d)(1) **PROCEDURE**

Within one hour of a request by the Department to review staff records, the licensee shall transport the staff records to the child care center. This request should be made immediately upon arrival, or as soon as it is determined that staff records will be reviewed.

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**101218 ADMISSION POLICIES**

**101218**

**(b) POLICY**

Center staff shall make this assessment during the pre-enrollment interview(s) with the authorized representative of a child with disabilities, and shall monitor the child’s progress during his/her stay at the center.

**PROCEDURE**

Ensure that an interview(s) has been conducted. Also ensure that the child in question is continuously observed by center staff pursuant to Section 101226.3.

**101220 CHILD’S MEDICAL ASSESSMENTS**

**101220**

**(b)(2) POLICY**

A child who attends a child care center is no longer automatically required to have a skin test for tuberculosis. Instead, the child is to be evaluated for risk factors for tuberculosis as part of his or her medical assessment. A child is only required to have a Mantoux skin test for tuberculosis if determined to be necessary by a physician based on the child’s risk factors for tuberculosis.

This policy change is being made at the request of the tuberculosis Control Branch of the California Department of Health Services. It is based on state and national consensus recommendations for tuberculosis testing. According to the Committee on Infectious Diseases of the American Academy of Pediatrics, routine skin testing for tuberculosis “has either a low yield of positive results or a large number of false-positive results and represents an inefficient use of limited health care resources.” Therefore, the American Academy of Pediatrics states that children without risk factors don’t need to have routine skin testing for tuberculosis.

**PROCEDURE**

Use the revised Physician’s Report—Child Care Centers (LIC 701) for all new children entering child care centers. This form has a box titled “Screening of Tuberculosis Risk Factors” that the child’s physician or designee must complete. The risk factors for tuberculosis in children are on the back of the form.

The child care center regulations will be amended as soon as possible to reflect the revised tuberculosis testing policy.

**(d) (2) POLICY**

Please see the Policy and Procedure statement under Section 101220(b)(2) for an explanation of the revised tuberculosis testing policy for children who attend child care centers.

101220 CHILD'S MEDICAL ASSESSMENTS (Continued)

101220

**PROCEDURE**

Ensure that a Physician's Report—Child Care Centers (LIC 701) is on file for each child.

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(e)

**POLICY**

By separate authority, schools are required to obtain medical examination information and monitor immunizations--and to maintain related documentation. But centers must still obtain health history information from each child's authorized representative in order to be able to understand each child's expected level of activity and to disclose disorders such as allergies, asthma, diabetes, etc.

**PROCEDURE**

Ensure that a Child's Pre-Admission Health History—Parents' Report (LIC 702), or its equivalent, is on file for each child.

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(f)(2)

**POLICY**

Such statements shall be on file at the center.

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101220.1 IMMUNIZATIONS

101220.1

(a)

**POLICY**

A child may not attend a child care center until after the child's immunization record is obtained. No longer may a child attend while the child's authorized representative obtains information from the child's physician. There is no grace period for newly entering children. However, children may attend the center if they lack vaccine doses for which they are not yet due. To continue to attend the center, they must get the additional immunizations needed at the appropriate times. It is the responsibility of the center to follow up on these children.

**NOTE:** As indicated in Section 101220.1(e), a child may also attend a child care center under either one of the following circumstances: 1) a physician provides a written statement that an immunization(s) should not be given to a child and specifies how long the exemption is expected to be needed; **or** 2) the child's authorized representative provides a written statement that immunizations are contrary to his/her personal or religious beliefs.

**PROCEDURE**

Child care center staff must transcribe the information from the immunization record provided by the child's authorized representative onto the blue California School Immunization Record (the PM 286, or "blue card"). Subject to availability, blue cards can be obtained from the California Department of Social Services warehouse or the local county health department. Staff should follow the instructions on the back of the blue card. Staff must initial and date the PM 286 where indicated to verify that they have transferred the appropriate immunization information onto the blue cards. Blue cards may not be sent home for authorized representatives to complete.

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**101220.1 IMMUNIZATIONS (Continued)**

**101220.1**

(g) **PROCEDURE**

If the documentation appears inadequate, alert the local county health department.

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(i) **POLICY**

By separate authority, public and private schools are required to monitor immunizations.

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**101221 CHILD'S RECORDS**

**101221**

(a) **POLICY**

Infant, preschool and school-age children's records may be kept at a Central Program Office provided the following original documentation is kept at the center:

1. Record of current medications, name of prescribing physician and related instructions;
2. Name, address and telephone number(s) of the authorized representative;
3. Name, address and telephone number of the child's physician and any other medical and mental health providers.
4. Medical assessment;
5. Dietary restrictions and allergies;
6. Instructions for action to be taken in case the child's authorized representative, or the physician designated by the authorized representative, cannot be reached in an emergency;
7. Name, address and telephone number(s) of relatives or others who can assume responsibility for the child if the authorized representative cannot be reached when necessary;
8. A consent form for emergency medical treatment signed by the child's authorized representative; and
9. In addition to the above, for infants, the following shall be maintained at the center:
  - a. The individual feeding plan.
  - b. Any services needed by the child that are different from those provided by the center's normal program. (See Section 101419.2.)

**PROCEDURE**

Within one hour of a request by the Department to review children’s records, the licensee shall transport the records to the center. This request should be made immediately upon arrival, or as soon as it is determined that children’s records will be reviewed.

---

(b)

**PROCEDURE**

Review a sample of 10 percent, or a minimum of ten, of the children’s record files. Document your review on the Children’s Records Review (Child Care Center) (LIC 857). If the capacity of the center is less than ten children, review 100 percent of the children’s record files. If your review reveals any substantial problems, more records should be sampled.

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(b)(5)

**POLICY**

Health and Safety Code Section 1596.841 requires that child care centers maintain a facility roster that includes each child’s name and address, the daytime phone number(s) of each child’s authorized representative, and the name and phone number of each child’s physician.

In addition, Health and Safety Code Section 1596.876 requires the licensee or person in charge of the center to release the address and phone number of the authorized representative of any child to a peace officer.

**PROCEDURE**

Ensure that a completed Identification and Emergency Information form (LIC 700), or its equivalent, is on file for each child.

Notify licensees at the time of a site visit that a roster is now required and that it must contain the information noted above. The LIC 809 will be used to state that the licensee was so instructed.

If a licensee refuses to comply with these requirements, cite the lack of compliance as a deficiency, using the appropriate Health and Safety Code Section as the authority.

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## 101223 PERSONAL RIGHTS

101223

(a)(5)

**POLICY**

Children in licensed child care centers have the right to practice the religious beliefs of choice of their authorized representatives.

Centers operated by a religious organization may submit a request for a waiver of strict adherence to this section, since an authorized representative's choice to send his or her child to a religious child care program is, in effect, an exercise of this right. On the Personal Rights form (LIC 613A), the center can omit Item No. 5 (which deals with religious rights) from the form--or can develop its own form as long as the remaining rights are listed.

To initiate the waiver process, the applicant should, according to Section 101175(b)(2), submit a request in writing to the Department outlining the center's intent to either alter the Department's the LIC 613A (omitting Item No. 5) or to develop its own form. If the center plans to develop its own form, an example of the proposed form should be included with the waiver request. The Department will respond with a written approval or denial of the request in accordance with the procedures outlined in Evaluator Manual Reference Material Section 2-5000, disregarding, **in this case only**, instructions in Section 2-5310 not to waive personal rights requirements.

(a)(7)

**POLICY**

Restraints used as a means for controlling behavior are not allowed in child care centers.

The above includes the use of prone containment as a method of controlling children. The prone-containment prohibition applies to the restraint procedure in which a child is contained in a prone or supine (face-down or face-up) position on the floor or on a bed by staff members who apply their weight to the child's legs, arms, buttocks and shoulders.

The prohibition against prone containment is not intended to preclude the use of reasonable force in emergency situations in which an assaultive child threatens death or serious injury to himself or others. Such a circumstance that develops suddenly and unexpectedly may require the use of prone containment to protect the child and/or others from the threat of serious injury or death. Prone containment **should not** be resorted to unless no alternative means of avoiding danger are available.

In such an extreme emergency, if prone containment is necessary, the following precautions shall be followed:

1. Children who are contained shall be observed at all times.
2. No pressure shall be applied on ankles, wrists, elbows, back, rib cage, knees, spinal column or the neck area.
3. No blankets, pillows, clothing or any type of covering shall be placed on the child's head or face.

## 101223 PERSONAL RIGHTS (Continued)

101223

(a)(7)

**POLICY** (Continued)

For reporting purposes, the use of prone containment is considered an **unusual incident**. As required by Section 101212(d)(1)(C), unusual incidents must be reported by telephone or fax to the Department within the Department's next working day and during its normal business hours; a written report with more detailed information must also be sent to the Department within seven days. The report must include a description of the child's assaultive behavior, the containment method used and its duration, and the staff involved. A recurrent need for the use of prone containment is evidence that the child in question is not appropriate for continued placement in a child care center.

Advance approval to use **supportive** restraints shall be by individual exception only. The Department shall grant such advance approval only if the requirements, policies and procedures of (1) through (4) below are met. (See Evaluator Manual Reference Material Section 2-5000.)

For those child care centers in which behavioral restraints have been allowed in the past, the Department shall reevaluate the exception when it expires and determine if the exception meets the criteria specified in this policy. In those cases where a center is using behavioral restraints and is not conforming with this policy, the Department shall advise the licensee that the restraints must be discontinued or the child(ren) relocated.

If the licensee refuses to discontinue the use of the restraint(s) or to relocate the child(ren), the Department shall take other administrative action as appropriate.

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**101223.1 POSTURAL SUPPORTS/PROTECTIVE DEVICES****101223.1**

(a)(1)

**POLICY**

**Soft ties** means soft cloth (e.g., muslin sheeting) that does not cause abrasion, that does not restrict blood circulation, and that can be easily removed in the event of an emergency. Under no circumstances shall supportive restraints include tying, depriving or limiting the use of a child's hands or feet.

(a)(2)

**POLICY**

1. Children may be placed in supportive restraints only upon the written order of a physician **and** with the written approval of the child's authorized representative. Such order shall not run beyond 90 days without a reorder by a physician, based upon observation of the child.
2. Children in supportive restraints shall be observed at least every 30 minutes, or more often if needed, by the staff person responsible for the child's care or by a supervisor. Observations shall be put in writing (for example, by using a card file, listing or log). This documentation shall be kept on file at the center.

**101223.1 PERSONAL RIGHTS (Continued)**

**101223.1**

(a)(2) **POLICY (Continued)**

At change of duty (shift change, etc.), oncoming responsible staff shall acknowledge in writing that the child is in a supportive restraint. This documentation--which may be in the form of a card file, listing, log, or note in the child's record--shall verify that oncoming staff are aware of the child's situation. A notation shall be made in the child's record whenever a restraint is applied to or removed from the child.

**PROCEDURE**

See Policy for subsection (a)(7) of Section 101223 above for additional documentation required for use of prone containment.

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(a)(4) **POLICY**

A postural restraint is not permitted without an appropriate fire clearance from the State Fire Marshal. For the purpose of securing an appropriate fire clearance, children in supportive restraints shall be considered nonambulatory. On the request for a fire clearance, it shall be noted that the center intends to use supportive restraints by marking Item 15 on the STD 850.

**PROCEDURE**

Advise support staff to note on the STD 850, Item 15, that the center intends to use supportive restraints. (See Sections 101152 n. (1) and 101171(b)).

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**101226 HEALTH-RELATED SERVICES**

**101226**

**(Children with Special Needs)**

**POLICY**

As specified in Health and Safety Code Section 1596.750, **in general** child care centers can only provide nonmedical care and supervision to children.

**PROCEDURE**

The following information is being provided in response to questions posed about the extent to which child care centers can provide care to children with special needs in light of the above statute. For ease of reference, all of the questions and answers related to the care of children with special needs have been consolidated into this section, even though some of the information relates to such topics as fingerprint clearances. Cross-references have been made as appropriate.

**PROCEDURE (Continued)****Issue 1**

In already licensed programs, what is the extent to which the licensee/center may provide or make provision for children with special medical needs?

**Response**

Although child care center staff cannot provide medical care (with a few exceptions), the licensee or the center is authorized to do the following:

1. As specified in the California Code of Regulations, Title 22, Section 101226(e), the licensee may handle and administer prescription and nonprescription medications.
2. As specified in Title 22, Section 101221(c), each child's record must contain instructions for action to be taken if the child's authorized representative, or the physician designated by the authorized representative, cannot be reached in the event of an emergency. Each child's record must also contain a signed consent form for emergency medical treatment unless the authorized representative has signed the statement specified in Section 101220(f).

In general, specific medical procedures--such as tracheostomy care--can be rendered only by the individual himself/herself or by a parent or authorized representative in accordance with Health and Safety Code Section 1596.750. Child care center staff are not permitted to render such care to children even though children are unlikely to be able to render such care to themselves. However, licensees may permit the child's **parent/**authorized representative--or an appropriately skilled professional hired by the **parent/**authorized representative--to render such care to the child while the child attends the center. In other words, as long as it is the **parent/**authorized representative (and not the licensee and/or an employee of the center) who renders such care, or who arranges for such care to be rendered, the licensee and/or the center is not considered to be providing or rendering medical care.

With the passage of the Americans with Disabilities Act in 1990, and Assembly Bill 2222, and the increased number of children with special medical needs who need access to licensed child care, the types of care that trained child care licensees and staff can provide to children in care has been changing in recent years. Due to the passage of legislation the following types of care can definitely be provided to children in licensed child care facilities:

- Blood-glucose testing of diabetic children if certain requirements are met (Health and Safety Code Section 1596.797 and Business and Professions Code Section 1241).

## 101226 HEALTH-RELATED SERVICES (Continued)

101226

**PROCEDURE** (Continued)

- Administering inhaled medication to children if certain requirements are met (Health and Safety Code Section 1596.798). Please also see the instructions regarding the implementing legislation, Senate Bill 1663 (O'Connell), Chapter 625, Statutes of 1998, in the 1998 Child Care Chaptered Legislation and Implementation (99 APX-07), December 1998).
- Gastrostomy-tube care if certain requirements are met. Please see Evaluator Manual Section 101226(e) (Gastrostomy-Tube Care) for instructions on how this care is to be provided in licensed child care centers.
- Use of an EpiPen Jr.--a disposable, prefilled automatic injection device designed to deliver a single dose of 0.15 mg. of epinephrine for allergic emergencies--in the event of an allergic emergency and as prescribed by the child's physician. Please see Evaluator Manual Section 101226(e) (EpiPen Jr.) for instructions on how this care is to be provided in licensed child care centers.

Additionally, the administration of glucagon as a life saving, emergency measure for a child diagnosed with diabetes is allowed with an exception. Licensees/providers who choose to administer glucagon to a child may do so under specified conditions provided they request and receive an exception for each child. Please see the instructions under the response to Issue 3.

If you receive a request from a child care center to care for a child with another type of medically related or similar special need, please consult with your Local Unit Manager to determine if the care can be provided by granting an exception, etc. In addition, the Regional Office should consult with the Child Care Program Office. Depending on the issue, staff in the Child Care Program Office may have to consult with the Legal Office and State health agencies to determine if trained child care licensees and staff can provide certain types of care to children with special needs in licensed child care facilities.

**Issue 2**

If a child with a severe allergy or diabetes brings a premeasured dose of injectable medication to be administered only in the event of an extreme emergency, how does this fit in with nonmedical care? May center staff assist with injections?

**Response**

In general, medical professionals are the only persons permitted by law to administer injections. Parents/authorized representative, however, are permitted by law to give injections, including insulin, to their own children. Parents/authorized representative may also make arrangements with a medical professional to administer an injection to their child.

In emergencies, licensees should follow the procedures specified in Title 22, Section 101226 (please also see Issue 1 relative to the requirements of Title 22, Section 101221). In addition, as indicated above and in Evaluator Manual Section 101226(e) (EpiPen Jr.), nonmedical personnel such as child care center staff may use an EpiPen Jr. Auto-Injector as prescribed by a physician in the event of an allergic emergency.

**PROCEDURE** (Continued)**Issue 3**

If a licensee or provider chooses to accept a child diagnosed with diabetes, can they administer glucagon as a lifesaving measure should the child suffer from hypoglycemia as a result of low blood sugar? What steps must the licensee or provider follow in order to administer glucagon?

**Response**

Licensees who choose to administer glucagon to a child diagnosed with diabetes may request an exception provided they can meet the needs of the child. The exception shall be approved prior to admitting the child into care.

**Issue 4**

Whose responsibility is it to be sure that the child's needs are being properly met when medical needs are present?

**Response**

It is the responsibility of the center and the child's authorized representative at the time of admission and throughout the child's attendance at the facility (Title 22, Sections 101214, 101215, 101216, 101218, 101218.1, 101219, 101226 and 101226.3).

**Issue 5**

Are supportive restraints permitted if needed for the safety of the child?

Title 22, Section 101223.1, permits the use of supportive restraints under specified conditions.

**Issue 6**

Are preschool programs operated by school districts serving children with special needs subject to licensure? Are these programs "preempted" from licensure if they are mandated by Section 15000 of the Education Code? Are they subject to licensure if they are mandated but choose to also accept children with special needs?

Preschool programs serving children with special needs and operated by school districts used to be subject to Title 22 licensure, since they did not fall under any of the exempt categories identified in Health and Safety Code Section 1596.792. However, Assembly Bill 3783 (Farr), Chapter 1061, Statutes of 1992, amended Education Code Section 56440(g) to clarify that special education facilities for children with special needs from three to five years of age, inclusive, are exempt from Title 22 licensing requirements (Chapters 3.4, 3.5 and 3.6 of the Health and Safety Code). In addition, Assembly Bill 369 (O'Connell), Chapter 1296, Statutes of 1993, further amended Education Code Section 56440(g) to clarify that special education facilities for children with special needs from birth to three years of age, inclusive, are similarly exempt from Title 22 licensing requirements. However, the exemption regulations are revised to specify that special education programs are exempt from child care licensing requirements, use Education Code Section 56440 as the authority for exemption.

## 101226 HEALTH-RELATED SERVICES (Continued)

101226

## PROCEDURE (Continued)

“Special education” is defined in Education Code Section 56031, in part, as:

*...specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, that may be needed to assist these individuals to benefit from specially designed instruction.*

“Individuals with exceptional needs” is defined in Education Code Section 56026, in part, as:

*...identified by an individualized education program team as children with disabilities as that phrase is defined in paragraph (1) of subdivision (a) of Section 1401 of Title 20 of the United States Code.*

*...identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.*

**Issue 7**

Do professionals who are generally employed by the school district (such as speech therapists), and who work alone with a child with special needs in a child care center, need to be fingerprinted and have a health clearance?

Health and Safety Code Section 1596.871 specifies those persons required to be fingerprinted. As amended by Assembly Bill 3372 (Becerra), Chapter 1113, Statutes of 1992, Section 1596.871, now provides for the following:

1. Relative to speech therapists and other employees of a school district (including aides), Health and Safety Code Section 1596.871(b)(10) exempts employees of child care and development programs operated by a school district, county office of education, or community college district under contract with the California Department of Education from obtaining a criminal records clearance if such a clearance was obtained as a condition of employment. This exemption provision pertains to Head Start programs funded under Title 5.
2. Further, Health and Safety Code Section 1596.871(b)(9) exempts from criminal records clearance all credentialed teachers in the California Department of Education-funded child care and development programs, including employees of child care and development programs that serve both children subsidized under and not subsidized under a California Department of Education contract. This exemption provision is not affected by whether the specific credentialed teacher is employed in a subsidized position.

Employees listed on the Personnel Report as Staff Exempt from Fingerprint Requirements (LIC 500, Part B) are also exempt from the requirement for a child abuse index check.

## 101226 HEALTH-RELATED SERVICES (Continued)

101226

## PROCEDURE (Continued)

Assembly Bill 3372 also provides for the following relative to the health-screening requirements of Title 22, Section 101216(g):

3. Health and Safety Code Section 1596.8716 has been added to exempt employees of child care and development programs operated by a school district, county office of education, or community college under contract with California State Department of Education from health-screening requirements for purposes of Title 22 licensing if a physical examination was completed as a condition of employment.

**Issue 8**

When an aide is provided by the school and works in the child care center on a daily basis, what is the extent of the responsibility of center staff over the aide?

In terms of daily operations, the center has the same responsibility over an “aide” or “volunteer” as it has over any other individual serving in like capacity, i.e., the aide/volunteer must be supervised by qualified staff and cannot be included in the staffing plan/ratios as specified in Title 22, Section 101216(c).

**Issue 9**

Are fingerprint clearances, child abuse index checks and medical clearances required to be on file for aides described in **Issue 8** above? What authority does the Community Care Licensing Division have if a problem appears in this area?

Please see the response to **Issue 8** above, which applies as indicated to aides employed by schools. However, Health and Safety Code Section 1596.871(b)(1)(A) through (D) specifies in addition to the applicant, the following persons must submit fingerprints for the purpose of a criminal record clearance:

- Adults responsible for administration or direct supervision of staff.
- Any person, other than a child, residing in the facility.
- Any person who provides care and supervision to the children.
- Any staff person, volunteers or employee who has contact with the children.

To address the second part of this question, if a problem appears in this area and it is determined that a staff person is present in a center without a Department of Justice clearance or an exemption then the center will be issued an immediate \$100 civil penalty under Title 22, Section 101170. For no criminal records clearance, the center will be cited under Title 22, Section 101170, and Health and Safety Code Section 1596.871(c); for no child abuse index check, the center will be cited under Health and Safety Code Section 1596.877; and for no health screening, the center will be cited under Title 22, Section 101216.

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## 101226 HEALTH-RELATED SERVICES (Continued)

101226

(c)(1)(A)

**POLICY**

A second original or a copy of each child's Consent for Medical Treatment (LIC 627) should be available for field trips.

(d)

**POLICY**

It is not necessary to secure first-aid supplies with a lock if they are stored where children cannot reach them.

(e)

**POLICY**

Pursuant to Business and Professions Code Section 2058, nonmedical personnel such as child care center staff may administer the EpiPen Jr. Auto-Injector **or the EpiPen Auto Injector** as prescribed by a physician and in emergencies only.

**PROCEDURE**

**Both** the EpiPen Jr. **and the EpiPen are** disposable, prefilled automatic injection devices designed to deliver a single dose of epinephrine for allergic emergencies. **They should only be used by, and/or administered to, a hypersensitive (allergic) person in the event of an allergic emergency as prescribed by a physician.** Such emergencies may occur from insect stings or bites, foods, drugs or other allergens, as well as from idiopathic or exercise-induced anaphylaxis.

**The EpiPen Jr. Auto Injector delivers a single dose of 0.15 mg epinephrine for people weighing between 33 and 66 pounds. The EpiPen delivers a single dose of 0.3 mg epinephrine for people weighing over 66 pounds.**

The use of the EpiPen Jr. **and the EpiPen** is being permitted pursuant to Business and Professions Code Section 2058 because of its demonstrated potential to save lives when there may be only minutes to spare; and because it is premeasured and contained in an automatic injection device. The licensee must handle and administer **both of these devices** as specified in Title 22, Section 101226 (e). However, **whenever these devices are** used, the licensee must still obtain emergency medical treatment for the child as specified in Title 22, Section 101226 (c). The use of **these devices are** emergency supportive therapy only and is not a replacement or substitute for immediate medical or hospital care.

In addition to Title 22, Section 101226(e), the following applies to the use of the EpiPen Jr. **or the EpiPen**:

1. Use in accordance with the directions and as prescribed by a physician.
2. Keep ready for use at all times.
3. Protect from exposure to light and extreme heat.

101226 HEALTH-RELATED SERVICES (Continued)

101226

**PROCEDURE** (Continued)

4. Note the expiration date on the unit and replace the unit prior to that date.
5. Replace any auto-injector if the solution is discolored or contains a precipitate. (Both the EpiPen Jr. and the EpiPen have a see-through window to allow periodic examination of its contents. The physician may recommend emergency use of an auto-injector with discolored contents rather than postponing treatment.)

Review the center's written plan for handling medications, interview staff regarding their training in this area, and ensure that any refrigerated medications are made inaccessible to children. The Centrally Stored Medication and Destruction Records form (LIC 622) is available for maintaining records.

(e)(3) and (4)

**POLICY**

The licensee is required to obtain written approval and instructions from a child's parent/authorized representative prior to administering any physician- prescribed or over-the-counter (nonprescription) medication. As long as the regulations in (e)(4) are followed, a licensee is not required to obtain approval or instructions from the child's physician to administer over-the-counter medication to the child.

**Blood-Glucose Monitoring for Diabetic Children****POLICY**

Health and Safety Code Section 1596.797 **permits** child care providers to administer a finger-stick test to a child diagnosed as a diabetic child in care if certain conditions are met. These conditions are listed in Business and Professions Code Section 1241. The law also states that the child care provider cannot be **required** to administer an insulin injection to any child in a child care facility.

Section 1241 of the Business and Professions Code, amended by AB 221, permits a trained layperson to perform blood glucose testing (using a finger-stick test) to monitor a child with diabetes if certain conditions are met:

- Child care staff performing the test must be entrusted with the child's care by the child's parent or legal guardian.
- The test must be approved by the Federal Food and Drug Administration for over-the-counter sale to the public without a prescription.
- Child care staff performing the test must have written permission from the child's parent or legal guardian to administer the test to the child.
- Child care staff performing the test must comply with written instructions from the child's physician (or designee, such as a nurse practitioner).

**101226 HEALTH-RELATED SERVICES (Continued)****101226**

- Child care staff performing the test must obtain written instructions from the child's physician or designee regarding how to:
  - Properly use the monitoring instrument (finger-stick test) and handle and lancets, test stripes, cotton balls, or other items used while conducting the test. (All this must be in accordance with the manufacturer's instructions).
  - Determine if the test results are within the normal or therapeutic range for the child, and any restrictions on activities or diet that may be necessary.
  - Identify the symptoms of hypoglycemia or hyperglycemia, and actions to take when results are not within the normal or therapeutic range for the child and any restrictions on activities or diet that may be necessary.
  - The written instructions must include the telephone numbers of the child's physician and parent or legal guardian.
- Child care staff performing the test must record the test results and provide them to the child's parent or legal guardian on a daily basis.
- Child care centers and family child care homes must post a list of universal precautions in a prominent place in the area where the test is performed.
- Child care staff must comply with universal precautions.

Registration as required by Section 1241(c) of the Business and Professions Code will not be implemented until procedures are developed with the Department of Health Services. You will be notified by separate letter when these procedures are developed.

AB 221 amends Section 2058 of the Business and Professions Code. This section contains the Medical Practice Act which allows the administration of the finger-stick test to a diabetic child in a licensed child care setting.

Use the statutory provisions in Health and Safety Code Section 1596.797 and Business and Professions Code 1241 as the authority for implementation.

## 101226 HEALTH-RELATED SERVICES (Continued)

101226

**PROCEDURE**

Licensing staff should ensure that applicants who wish to perform blood glucose monitoring do the following:

1. Include plans to provide this care in the facility's plan of operation as required by Title 22, Section 101173.
2. Notify the Department and update the facility's plan of operation as required by Title 22, Section 101212(e)(4).
3. Comply with Health and Safety Code Section 1596.797 (which refers to the conditions in the Business and Professions Code Section 1241 identified above.)

Licensees who do not comply should be cited under the appropriate Title 22 sections or Health and Safety Code Section 1596.797.

**Glucagon Administration In Child Care Center**

(e)(3)

**POLICY**

Glucagon is an emergency intervention injected into a child diagnosed with diabetes in the event of a severely low blood sugar level resulting in disorientation, seizures, convulsions, or unconsciousness. Without this emergency intervention a diabetic child could sustain brain damage or die, therefore, it is important to know when this intervention is necessary. Licensee must request an exception from the local Regional Office for each child accepted into care who may require this emergency intervention.

**PROCEDURE**

This emergency intervention is allowed through the exception process. The licensee must request and receive an exception and be able to meet the needs of the child. The following conditions must be met and addressed in the exception request:

- Written permission must be obtained from the child's parent or authorized representative.
- Child care staff administering glucagon must be trained by a competent person designated in writing by the child's physician; verification of the training must be maintained in staff files.
- The designated person may be the child's parent or authorized representative.
- At least one staff person trained to administer the glucagons must be available any time a child requiring this emergency intervention is in care, including activities away from the facility.

## 101226 HEALTH-RELATED SERVICES (Continued)

101226

- Child care staff administering glucagon must comply with written instructions from the child's physician or designated person regarding how to:
  - Recognize the symptoms of hypoglycemia and take appropriate action.
  - Properly administer the glucagon.
  - Call 911 and the child's parent or authorized representative immediately after administering the glucagon.
  - Recognize potential side effects of glucagon such as nausea and vomiting and the need to place the child on his or her side to prevent choking.
  - Review the glucagon for expiration.
  - Document the child's file each time glucagon is administered.

Licensees who choose to administer glucagon as a life-saving intervention to a child diagnosed with diabetes shall do the following:

- (1) Include plans to provide this care in the facility's plan of operation as required by Title 22, Section 10173.
- (2) Notify the Department as required by Title 22, Section 101212(d)(1)(C).

## 101226 HEALTH-RELATED SERVICES (Continued)

101226

SAMPLE CITATION LANGUAGE: HEALTH AND SAFETY CODE  
SECTION 1596.797:

- The person performing the blood glucose test is not entrusted with the care and control of the child by the child's parent or legal guardian.
- The blood glucose test used is not approved by the Federal Food and Drug Administration for over-the-counter sale to the public without a prescription.
- The person performing the blood glucose test does not have the written permission from the child's parent or legal guardian to administer the test.
- The person performing the blood glucose test is not complying with the written instructions from the child's (insert physician or designee such as a nurse practitioner).
- The person performing the blood glucose test has not obtained written instructions from the child's physician or designee regarding how to properly use the monitoring instrument and equipment.
- The person performing the blood glucose test has not obtained written instructions from the child's physician or designee regarding how to determine if the results of the test are within the normal or therapeutic range for the child.
- The person performing the blood glucose test has not obtained written instructions from the child's physician or designee regarding how to determine if any restriction on activities or diet are necessary.
- The person performing the blood glucose test has not obtained written instructions from the child's physician or designee regarding how to identify the symptoms of hypoglycemia or hyperglycemia, and actions to be taken when the results are not within the normal or therapeutic range for the child.
- The written instructions for the blood glucose test does not include the telephone number of the child's physician.
- The written instructions for the blood glucose test does not include the telephone number for the child's parent or legal guardian.
- The person performing the blood glucose test did not record the results of the blood glucose test.
- The person performing the blood glucose test did not provide the results of the blood glucose test to the child's parent or legal guardian on a daily basis.
- The person performing the blood glucose test did not comply with universal precautions.

101226 HEALTH-RELATED SERVICES (Continued)

101226

- The person performing the blood glucose test did not post a list of universal precautions in a prominent place in the area where the test is given.

**GASTROSTOMY-TUBE CARE - CHILD CARE CENTERS**

(e)

**POLICY**

There is nothing to prohibit licensees and staff from administering routine gastrostomy-tube (G-tube) feeding, or administering routine LIQUID medication through a G-tube, to an infant or a child in care who is in stable condition if all of the requirements outlined in this policy are met.

Routine G-tube care of an infant or a child who is in stable condition is not prohibited because the California Medical Board determined that such care is not considered a medical procedure.

**Nasogastric or Nasoenteric Tube Feeding Prohibited**

However, FEEDING THROUGH A NASOGASTRIC OR NASOENTERIC TUBE IS NOT ALLOWED UNDER ANY CIRCUMSTANCES. (The nasogastric or nasoenteric tube is a long, thin, flexible feeding tube passed through the nose into the stomach or small intestine.)

**Administration of Crushed Medications Prohibited**

In addition, a layperson in a licensed child care center is prohibited from administering CRUSHED MEDICATIONS to an infant or child through a G-tube because this procedure would increase the potential for harm to the infant or child.

101226 HEALTH-RELATED SERVICES (Continued)

101226

**GASTROSTOMY-TUBE CARE - CHILD CARE CENTERS (Continued)**(e) **POLICY (Continued)****Background**

The G-tube is a feeding tube that is placed in the stomach surgically. It allows liquid nutrients to be delivered directly into the stomach if the infant or child is unable to eat or unable to eat enough to remain healthy. One end of the tube is in the stomach and the other end comes out through the skin of the abdomen.

The gastric feeding button is a special type of feeding device that is surgically placed into the stomach, or it may be used to replace an already existing feeding tube. The device is level with the skin. During the feeding, an adaptor is used. When the feeding is complete, the adaptor is removed and the button is again level with the skin.

Intermittent gravity feeding means that the G-tube is held above the patient and the liquid formula is put into a syringe attached to the G-tube and delivered by gravity to the stomach. This method of feeding works for most patients who have G-tubes. However, an enteral (means “into the stomach”) feeding pump can also be used to deliver formula through the G-tube to the stomach.

For more specific information on G-tube feedings, please see medical texts or related web sites.

**PROCEDURE**

1. Overall procedures
  - a. An exception is NOT required.
  - b. When a child care center accepts its first child who needs G-tube care, licensing staff must verify that all of the requirements in this policy have been met BEFORE the child receives G-tube care at the center.
  - c. Thereafter, the center must notify the Department each time it accepts another child who needs G-tube care. This will enable licensing staff to keep track of how many children are receiving G-tube care in licensed child care centers and to address any subsequent concerns that may arise.

101226 HEALTH-RELATED SERVICES (Continued)

101226

## GASTROSTOMY-TUBE CARE - CHILD CARE CENTERS (Continued)

## PROCEDURE (Continued)

2. Revised plan of operation
  - a. In accordance with Section 101173(c), the licensee must do the following when the facility wishes to begin providing G-tube care:
    - Notify the Department of the facility's intent to provide G-tube care and obtain approval from the Department to provide this care; and
    - Submit a written statement to the Department of the facility's intent to provide G-tube care to be included in the plan of operation.
  - b. In accordance with Section 101173(b)(5), the written statement to be included in the plan of operation must include a statement on how child care staff are to be trained (see Number 3 below).
3. Written permission from the child's authorized representative
  - a. In accordance with Section 101226(e)(3)(B), the licensee must obtain written permission from the child's authorized representative for the licensee or designated staff member(s) to:
    - Administer G-tube feeding to the child;
    - Administer liquid medication to the child through a G-tube (if the child requires such medication); and
    - Contact the child's health care provider.
  - b. This documentation must include the telephone numbers (both home and work) and address of the child's authorized representative.
  - c. The LIC 701B, "Gastrostomy-Tube Care Consent/Verification - Child Care Facilities," is to be used to document permission from the child's authorized representative.
4. Instruction in G-tube feeding/administration of liquid medication by a competent person designated by the child's physician
  - a. In accordance with Section 101216(a), the licensee must ensure that staff who administer G-tube feeding to the child care are competent to do so.

101226 HEALTH-RELATED SERVICES (Continued)

101226

## GASTROSTOMY-TUBE CARE - CHILD CARE CENTERS (Continued)

## PROCEDURE (Continued)

- b. Therefore, for each individual child, each individual licensee or staff person who provides G-tube care to the child must be instructed on how to provide G-tube care to the child by a competent person designated by the child's physician. Instruction in G-tube care is to include:
- How to administer G-tube feeding to the child;
  - How to administer liquid medication to the child through a G-tube (if the child requires such medication); and
  - Trouble-shooting, including actions to take in an emergency (please see Number 5f as well).

The designated person may be the child's authorized representative if the physician deems the authorized representative competent to provide the instruction.

- c. The child's physician must designate in writing the person authorized to provide instruction in G-tube care. The LIC 701A, "Gastrostomy-Tube Care: Physician's Checklist (Child Care Facilities)," is to be used for this purpose. In accordance with Section 101221, this documentation must be kept in the child's file.
- d. Completion of instruction in G-tube care by the licensee and/or staff person must be verified in writing. The written verification must include the name of the instructor, date of the instruction, areas the instruction covered, and duration of the instruction (number of hours). In accordance with Section 101217(a), this documentation must be kept in the employee's personnel file.
- e. It is also recommended that the licensee or staff person complete additional training in G-tube care. This training may be taken from a G-tube manufacturer's representative or through a local class.
5. Assessment of appropriateness of G-tube care by the child's physician
- a. In accordance with Section 101220, the child's medical assessment must include an assessment of whether the child's medical condition is stable enough for a layperson in a child care setting to safely administer G-tube feeding and/or liquid medication to the child through a G-tube.

101226 HEALTH-RELATED SERVICES (Continued)

101226

**GASTROSTOMY-TUBE CARE - CHILD CARE CENTERS** (Continued)**PROCEDURE** (Continued)

- b. The assessment of the stability of the child's medical condition is to be included on the LIC 701A (G-tube physician's checklist). (The LIC 701A may be used in conjunction with the LIC 701, "Physician's Report – Child Care Centers".)

6. Written instructions from the child's physician

The licensee or staff person who provides G-tube care must follow specific written instructions from the child's physician or a health care provider working under the supervision of the child's physician (for example, a physician's assistant, nurse practitioner or registered nurse). These instructions are to be attached to the child's LIC 701A (G-tube physician's checklist).

In accordance with Section 101226(e)(3), the written instructions must be updated annually, or whenever the child's needs dictate (for example, if the child obtains a different type of G-tube or if the frequency of feeding and amount/type of formula or liquid medication to be administered to the child changes). The written instructions can only be updated by the child's physician or a health care provider working under the supervision of the child's physician. In addition, the written instructions must include specific, explicit steps for a layperson to administer G-tube feeding or liquid medication to the child and provide related necessary care. This includes, but may not be limited to, the following:

- a. Any limitations or modifications to normal activity required by the presence of the G-tube.
- b. Frequency of feeding and amount/type of formula or liquid medication to be administered to the child in accordance with the physician's prescription [Section 101226(e)(3)].
- c. Hydration of the child with water or other liquids as determined by the child's physician.

## GASTROSTOMY-TUBE CARE - CHILD CARE CENTERS (Continued)

## PROCEDURE (Continued)

- d. Method of feeding, administering liquid medication or hydrating the child, including how high the syringe is to be held during the feeding. If applicable, this includes how to use an enteral (means “into the stomach”) feeding pump.
- e. Positioning of the child.
- f. Potential side effects, e.g., nausea, vomiting, abdominal cramping. (Decompression - the removal of gas in the gastrointestinal tract - is not to be performed on the child beyond briefly removing the cap from the gastric feeding button. Pressing on the child’s stomach to try and remove air may harm the child and should not be done. However, the cap may be taken off the gastric feeding button for a brief time only, which may or may not help relieve gas in the child.)
- g. Specific actions to be taken in the event of specific side effects or an inability to complete a feeding, administration of liquid medication to the child, or hydration of the child in accordance with the physician’s prescription. This includes actions to be taken in an emergency.
- h. How and when to flush out the G-tube with water, including what to do if the G-tube becomes clogged. Specific instructions on how many cc’s of water to use when flushing out the G-tube.
- i. Instructions for proper sanitation, including care and cleaning of the stoma site.
- j. Instructions for proper storage of the formula or the liquid medication [Section 101226(e)(1)].
- k. Instructions for proper care and storage of equipment.
- l. The telephone number and address of the child’s physician or designee.

7. Manufacturer’s instructions to be kept on file

In accordance with Section 101226(e)(3), a copy of the G-tube manufacturer’s instructions must be kept on file at the child care facility. (Note: If there is a conflict between the physician’s instructions and the manufacturer’s instructions, the physician’s instructions should always be followed.)

## GASTROSTOMY-TUBE CARE - CHILD CARE CENTERS (Continued)

## PROCEDURE (Continued)

8. Record of G-tube care

- a. In accordance with Section 101226(e)(5), the licensee or staff person must keep a record of each time he or she administers a G-tube feeding, liquids (hydration) or liquid medication to the child. This record must be provided to the child's authorized representative on a daily basis and be available to licensing representatives upon request. In accordance with Section 101221, this documentation must be maintained in the child's file.

9. Summary of record requirements

Following is a summary of all of the items that must be on file with regard to providing G-tube care in a licensed child care center:

- a. Licensee's statement of intent to provide G-tube care, including a statement on how staff are to be trained in G-tube care. Included with the program materials (plan of operation) in the office file. [2a]
- b. Written permission from the child's authorized representative for the licensee or designated staff member(s) to provide G-tube care to the child. The LIC 701B (G-tube consent/verification) is to be used for this purpose. A separate LIC 701B must be on file for EACH person who provides G-tube care to the child. Included in the child's file and in each respective employee's personnel file at the facility. [3a]
- c. Physician's written designation of person deemed competent to provide instruction in G-tube care. The LIC 701A (G-tube physician's checklist) has space for this information. Included in the child's file at the facility. [4c]
- d. Written verification of the licensee's or employee's completion of instruction in G-tube care. Included in each respective employee's personnel file at the facility. [4d]
- e. Child's medical assessment, including the physician's assessment of the appropriateness of providing G-tube care to the child. The LIC 701, "Physician's Report-Child Care Centers," and the LIC 701A (G-tube physician's checklist) are to be used to document this information. Included in the child's file at the facility. [5a]
- f. Written instructions from the physician, with any updates attached. Should be attached to the LIC 701A (G-tube physician's checklist). Included in the child's file at the facility. [6]

101226 HEALTH-RELATED SERVICES (Continued)

101226

## GASTROSTOMY-TUBE CARE - CHILD CARE CENTERS (Continued)

## PROCEDURE (Continued)

- g. A copy of the G-tube manufacturer's instructions. Included in the child's file at the facility. [7]
  - h. Record of administration of G-tube feedings, liquids (hydration) and liquid medications. Included in the child's file at the facility. [8]
10. Meeting the child's needs
- a. The licensee of the facility in which the care is provided must ensure that the child's needs and the needs of the other children in care are met.
  - b. As appropriate, this includes ensuring that trained back-up staff are available to assist the child if necessary.
  - c. If the child's needs are not met, cite the licensee under Section 101229(a). In addition, if the licensing analyst suspects that something is wrong with the way the licensee is handling the child's G-tube care (e.g., the equipment does not look like it is being properly cared for, the records do not look right, etc.), the licensing analyst should consult with the Local Unit Manager to decide whether to contact the child's authorized representative or physician regarding those concerns.

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**EMPTYING AN ILEOSTOMY BAG**

An ileostomy bag is a bag attached to the outside of the abdomen that may be emptied of feces and re-sealed while remaining attached to the abdomen of the child. After consultation with the Board of Registered Nursing, it is determined that emptying the ileostomy bag is not considered a medical procedure. It is equivalent to changing a diaper and may be done by the licensee or staff in a licensed child care facility.

It is not necessary for the licensee to request an exception to empty the ileostomy bag, however, the LIC 809 must include documentation that the facility is caring for a child using an ileostomy bag and the only function that will be performed by the licensee or staff is emptying the bag. All other care related to the ileostomy shall be provided by the parent/authorized representative or a medical professional. When the parent or authorized representative cannot be reached, the licensee or staff person must call 911.

**101226.1 DAILY INSPECTION FOR ILLNESS****101226.1**

(b)(2)(A)

**POLICY**

The center's attendance/roll sheets may be modified to serve as sign-in sheets.

The use of a computer system to sign children in/out of a day care center is permitted with certain stipulations. (Please see Evaluator Manual Section 101229.1.)

---

**101227 FOOD SERVICE****101227**

(a)(1)

**PROCEDURE**

If it is questionable whether a center meets this requirement, document on the Facility Evaluation Report (LIC 809) what food is available and discuss with your Local Unit Manager the need for consultation from a nutritionist. If there are documented sanitation problems, discuss with your Local Unit Manager the need for consultation from a local sanitarian. See Sections 101238 and 101239.

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(a)(7)

**PROCEDURE**

Review menus, food supplies, the Child's Pre-Admission Health History-- Parents' Report (LIC 702) and/or the Physician's Report--Child Care Centers (LIC 701) to ensure that the food inventory agrees with the written menu and that the menu provides for children who have medically prescribed diets.

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(a)(11)

**POLICY**

The official stamp of approval shall suffice as written evidence. The official **State** stamp is a "C" and a three digit number (e.g., C-123). The **federal** stamp is USDA.

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(a)(12)

**PROCEDURE**

If the licensee is using home-canned foods, inform him/her of the requirement to follow the safe canning procedures in the booklets and where to obtain them. If the licensee has not followed these standards, inform him/her that any unused home-canned foods cannot be served to children and that further canning must cease until the procedures outlined in the booklets are used. Document this on the LIC 809.

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**101227 FOOD SERVICE (Continued)****101227****(a)(13) POLICY**

This means that the center is purchasing from or contracting with an outside vendor to prepare meals.

**PROCEDURE**

If there is any question that the outside vendor meets the requirements for commercial food services, contact the local environmental health office for verification of licensure.

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**(a)(15) POLICY**

Perishable foods spoil readily without refrigeration, drying or some other method of food preservation. Examples include, but are not limited to, milk and other dairy products; uncooked eggs, meat, fish and poultry; fresh fruits and vegetables; bread and other baked products; all prepared items; and leftovers.

**PROCEDURE**

If it is suspected that the temperature of a refrigerator exceeds 45 degrees F (e.g., items in refrigerator are not cold to the touch, cheese or butter is softened, food is packed too tightly, etc.), use a holding thermometer to check the temperature. In some cases, the licensee may already maintain a thermometer inside the refrigerator.

---

**(a)(18) PROCEDURE**

Check the following:

1. Cleanliness of refrigerators and freezers. Frost accumulation is one sign that a refrigerator has been inadequately cleaned.
2. Cleanliness of floors and walls.
3. Cleanliness of cabinets and counters.
4. Cleanliness of appliances (large and small).
5. Dry storage area. Check for cracks and crevices that could allow rodents to enter and for damaged screens or windows that could allow insects to enter. Look under items stored on the floor and behind food on shelves for evidence of infestation. Check for rodent and insect infestation by opening all of the resealed containers and storage bins. Food should not be stored directly on the floor.

**101227 FOOD SERVICE (Continued)**

**101227**

(a)(18) **PROCEDURE (Continued)**

6. Look for contamination by small bugs, worms or weevils, and for rat and mice droppings, rub marks, runways, gnawings and tracks. Rub marks and runways are caused by established rodent pathways to feeding or nesting areas. Tracks can be seen on dusty surfaces.
  7. Although sanitation clearance inspections are not routinely requested on every center, if there is a serious question regarding such matters as proper food preparation and storage, sanitizing of dishes, insect control or general sanitation, discuss with your Local Unit Manager the need for such an inspection. (See Policy for Evaluator Manual Section 101238(a).)
- 

(a)(20) **PROCEDURE**

Check glasses and dishes to ensure that they are not chipped or cracked.

Check the vent fan for the stove to ensure that it works.

If you detect any gas smell when the stove and oven are not in use, this may indicate poor maintenance and the existence of a definite safety hazard.

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(b)(1) **PROCEDURE**

Document specific food service deficiencies prior to requiring a center to provide written information as to food purchases.

When a deficiency in food service is identified, document findings on the LIC 809 and, as necessary, on the Detail Supportive Information form (LIC 812).

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**101229 RESPONSIBILITY FOR PROVIDING CARE  
AND SUPERVISION**

**101229**

(a)(1) **POLICY**

It is not permissible for a teacher to be engaged in activities within the center while the children under his or her charge are being supervised by an aide on the play yard.

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**101229.1 SIGN IN AND SIGN OUT****101229.1****(d) POLICY**

Attendance/roll sheets can be used for this purpose.

In addition to sign-in/-out sheets, the use of a computer system to sign children in/out of a child care center is permitted with certain stipulations, as follows:

1. The child's authorized representative checks the child in/out of the center with a computer card and is also required to then immediately initial or sign the computer printout sheet next to the child's name.

**OR**

2. The child's authorized representative or other responsible person authorized to sign the child in/out (including other family members) is assigned an individual Personal Identification Number. To minimize the potential for abuse, an entire family cannot be issued one Personal Identification Number--and child care center employees cannot have knowledge of or access to individual Personal Identification Numbers.

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**PROCEDURE**

An applicant or licensee who wishes to use a computer system for sign-in/-out purposes as stipulated in either of the alternatives above shall submit to the Department a written request for a waiver as specified in Section 101175.

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**101230 ACTIVITIES****101230****(b) POLICY**

Children do not have to be asleep during the scheduled napping time (as indicated in the program activities statement). A child may remain awake and resting during the scheduled napping period. If a child wakes up early from a nap or becomes restless, that child may engage in a quiet activity (e.g., look at a book, draw, etc.) during naptime under the supervision of the teacher. If a child distracts or disturbs other napping/resting children and the teacher supervising the napping children needs assistance, one of the other teachers required to be immediately available at the center per Section 101330(c) shall be asked to assist with supervising the child creating the distraction or disturbance.

**(b)(1) POLICY**

Some cots or mats (two or three) should be available for children over the age of five who become ill or tired.

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## ARTICLE 7 PHYSICAL ENVIRONMENT

**101237 ALTERATIONS TO EXISTING BUILDINGS OR  
NEW FACILITIES****101237****(b) POLICY**

A person who plans to renovate or construct a building for use as a child care center must submit plans to the Regional Office for review and approval.

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**101238 BUILDINGS AND GROUNDS****101238****(a) POLICY**

County health department staff are to be utilized selectively by the Department to establish the compliance of an individual center with a specific licensing requirement. For example, county health department staff may be utilized to inspect the source of the private water supply of a child care center and to provide a bacteriological analysis of a sample of the water. Likewise, a county health department evaluation of a center's disposition of solid waste may be required to provide information relating to a potential threat to the health and safety of children from the center's waste disposal practice. However, inspection of a center by a county health department to ascertain compliance with the California Restaurant Act or any statute other than the California Child Day Care Act are inappropriate because such statutes do not apply to child care centers.

County health departments may be utilized as a consultant or as a collateral resource to the Department only when the evaluator cannot establish a center's compliance with the California Child Day Care Act and related regulations regarding, for example, sanitary conditions that could adversely affect children's health and safety. In such a case, the Department evaluates county health department input in relation to licensing standards. This precludes the application of other standards to facilities by the county health department.

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**(e) POLICY**

Pool inaccessibility does not relieve the licensee from his or her obligation to provide supervision. Both pool inaccessibility and supervision of children are required.

Pool covers embossed or labeled "F 1346-91" by the American Society for Testing Materials will support the weight of an adult. Pool domes are tent-like structures that fit over the pool for heating purposes. Domes are not designed to keep out children and are not acceptable substitutes for covers.

Fences must be in good repair and must completely surround the pool. Division 1, Appendix Chapter 4 of the 1994 Uniform Building Code, provides in pertinent part:

## 101238 BUILDINGS AND GROUNDS (Continued)

101238

## (e) POLICY (Continued)

1. Bottom

The bottom of the fence shall be no more than 2 inches from the ground (four inches if the fence is on a hard surface, such as a concrete deck, or mounted on top of an above-ground pool structure).

2. Sides**Separation Fence**

No door or window of the facility shall provide direct access to the pool. If a wall of the facility has doors or windows that provide direct access to the pool, a separation fence shall be provided.

**Indentations and Protrusions**

On the side away from the pool, protrusions and indentations are prohibited if they render the barrier easily climbable by children under the age of six. In particular, horizontal bars or beams on the side away from the pool shall be spaced at least 45 inches apart.

**Openings**

No opening shall permit the passage of a  $1\frac{3}{4}$ -inch (44 mm) diameter sphere (a golf ball, which has a diameter of 42.67 mm, provides a good approximation). However, for picket fences (fencing made up of vertical and horizontal members), if the tops of the horizontal beams are at least 45 inches apart, the pickets may be up to 4 inches apart.

**Thickness**

Wire used in chain-link fences must be thick enough that it cannot easily be broken, removed or stretched by children. Chicken wire, for example, is unacceptable.

Mesh fences that meet regulatory standards for pool fencing may be used provided that the licensee agrees on the LIC 809 that irrespective of whether or not children are present, the fence will remain permanently in place for the duration of the license.

**101238 BUILDINGS AND GROUNDS (Continued)****101238****(e) PROCEDURE**

A waiver to the requirements for pool covers and fences may be granted as follows:

1. The pool is regulated by the California Department of Health Services (examples include pools situated in apartment houses, mobile home parks, auto and trailer parks, condominiums, townhouses, public or private schools, hotels, motels and homeowners' associations) and the waiver request is supported by a copy of a current certificate of compliance with public pool regulations (24 California Code of Regulations, Part 2, State Chapter 90) issued by the local health authority. This documentation must be updated for continued approval at the next evaluation visit.
2. Apartment complexes in which the building encloses the pool area and is itself the pool barrier pose special problems. In this case, the waiver shall require either of the following for each door of the apartment that gives direct access to the pool:
  - (a) Installation of an alarm on the door of the licensee's apartment. The alarm shall meet the requirements of the 1994 edition of the Uniform Building Code, Appendix Chapter 4, Division 1, Section 421.1(5)(2). [Section 421.1(5)(2) provides that the alarm must be capable of being heard throughout the house during normal household activities. The alarm must also sound continuously for at least 10 seconds immediately after the door and its screen, if present, is opened. A switch or touch pad must be installed at least 4 1/2 feet from the floor which permits the alarm to be deactivated for a single opening of no more than 15 seconds. The alarm must automatically reset under all conditions.] Or,
  - (b) Installation of self-closing and self-latching devices with the release mechanism located a minimum of 54 inches above the floor.

Where windows of the apartment give direct access to the pool, the waiver shall also require that the window be secured so that it cannot be opened more than 4 inches. For example, a clamping device may be fitted into the window track. The device shall be of a kind that cannot be removed by children, such as clamps fixed in place by screws for aluminum windows or slats nailed into the tracks of wood-framed windows.

3. The degree of protection afforded is substantially the same as that afforded by the regulations. In processing the waiver, the local building department may be selectively used as a consultant.

**101238 BUILDINGS AND GROUNDS (Continued)**

**101238**

(e) **PROCEDURE (Continued)**

The following examples of waivers are not intended to be all-inclusive:

- a. When doors or windows of the facility provide direct access to the pool, and the proximity of the pool to the building does not permit the construction of a separation fence, a waiver may be granted as described in 2., above.
- b. A waiver may be granted to allow reduction in the size of fence openings using wire mesh or Plexiglas meeting the above thickness standards and securely fastened to the fence.
- c. A waiver may be granted to allow the use of slats fastened at the top or the bottom of a chain link fence to reduce the size of the openings.

A waiver may be granted to permit gates that are not equipped with self-latching or self-closing devices or which do not open away from the pool. These waivers shall be granted only if the licensee agrees to the following conditions: 1) The gate shall be kept locked at all times. 2) There is at least one access gate to the pool that meets the regulatory requirements. 3) This gate is used as the primary access to the pool.

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**101238.2 OUTDOOR ACTIVITY SPACE**

**101238.2**

(a) **POLICY**

Where a licensed child care program and an elementary school (public or private) share outdoor play areas, the Department's concern and jurisdiction lie only with the children in the licensed center. As such, separation of the outdoor play areas of these programs must be maintained. Separation may be achieved through the granting of exclusive use of the outdoor area to the preschool. However, where exclusive use is not possible, a waiver is then necessary to approve alternatives. An acceptable alternative to accomplish the separation would be through scheduling or fencing. If scheduling is used to achieve separation, children from the preschool must be allowed exclusive access to the school playground during the periods scheduled for outdoor activities, and there must be age-appropriate toys and equipment available for the preschool children. The above stipulations should be conditions to the waiver.

## 101238.2 OUTDOOR ACTIVITY SPACE (Continued)

101238.2

## (a)(1)(B) POLICY

See Section 101161(a) Policy for “mainstreaming” information.

## (b) POLICY

In a combination child care center program, separation of programs may be achieved by means including, but not limited to, fencing, supervision and scheduling. For other safe alternatives, a waiver is then necessary for approval. Separation can be achieved without requiring a center to build a fence inside a fenced play area. It was never intended that centers incur a cost to meet this regulation.

Planned activities are time-limited activities **previously identified by the licensee in the admission policies program of activities approved by the Department for mixed-age groups**. Generally, this applies during the first and last hour of the day, field trips, parties, class pictures and other like activities. However, this is not a blanket approval to allow children to be in mixed-age groups at any time at the convenience of the center. Planned activities are intended to be short-term activities--not ongoing, daylong activities.

## (b)(2) POLICY

Shade may be provided by trees, awnings, tables with umbrellas, etc.

Special attention must be paid to situations where children have to cross street(s) to get to the play yard.

## (e)(2) POLICY

The cushioning material in California Code of Regulations Section 101238.2(e)(1) above should be of sufficient thickness to cushion a child’s fall and to prevent serious injury.

## PROCEDURE

Inspect the material around and under equipment.

## (g) POLICY

A waiver may be considered when local restrictions require a fence less than four feet high.

## (h) POLICY

Hazards include manmade bodies of water such as canals and dams; dangerous terrain such as mineshafts, pits and quarries; and hazardous fixtures such as power lines or condemned buildings.

**101238.3 INDOOR ACTIVITY SPACE****101238.3****(a)(3) POLICY**

Capacity calculations are based in part on the total usable square footage of indoor activity space. Therefore, if the center has enough total square footage for the licensed capacity, there is no regulation to limit the number of children permitted in various rooms that were included in the calculation of indoor activity space. However, if the State Fire Marshal has posted a specific occupancy limitation for a particular room, this capacity limitation must be followed.

Total usable space calculations shall include the space occupied by the teacher's desk/table (provided this desk/table is not located in a separate office space but is in the general activity area of the center) and by the child-size sink located in the classroom. This does not include child-size sinks located in the bathroom, kitchen or any other location outside of the children's indoor activity area. Storage shelves/"cubbies" that children have free access to during their time at the center, or that are used to store books, games, etc., or that are otherwise part of the children's activities, shall also be counted in the usable space calculations. Storage shelves/ "cubbies" used to store children's personal items such as coats, bedding etc., shall not be counted in the usable space calculations.

See Policy in Evaluator Manual Section 101161(a) for "mainstreaming" information.

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**101238.4 STORAGE SPACE****101238.4****(a) POLICY**

Coats and other clothing from more than one child shall not be stored together in an individual storage space as this could create a breeding ground for lice. But it is permissible to hang coats or other clothing on hooks, pegs or hangers in the same area of a room.

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**(d) POLICY**

See Policy in Evaluator Manual Section 101239(c).

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**101239 FIXTURES, FURNITURE, EQUIPMENT, AND SUPPLIES****101239****(h) POLICY**

Section 101229 requires that, regardless of age, children be supervised at all times via visual observation.

## 101239 FIXTURES, FURNITURE, EQUIPMENT, AND SUPPLIES

101239

(Continued)

(h)

**POLICY** (Continued)

For example, let's assume the center has exclusive use of the bathrooms and the bathrooms are physically located outside the children's general activity area. When children go to the bathroom, a teacher (Section 101229) or an aide (Section 101216.2) must supervise the children.

In addition to supervision, if toilets are not for the exclusive use of children in care, the teacher or aide shall ensure that the bathroom is unoccupied and shall remain inside of or at the entrance to the bathroom while it is being used by the child. A waiver would be required if the center does not have exclusive use of the bathrooms. When a preschool is located on a school site, the child would need to be accompanied by the teacher or aide as described above who should remain in the bathroom while it is being used by the preschool child. However, it is not necessary to ensure that the bathroom is unoccupied prior to allowing use by the preschool child. The above conditions would apply to situations involving use of school bathrooms by preschool children when a preschool is located on a school site. The above stipulations should be a condition to the waiver.

Also, there is no regulatory basis for requiring bathroom facilities to be within a certain distance of the indoor activity area, nor for requiring that there be overhead protection for going to and from toilets.

(e)(3)

**POLICY**

The use of antibacterial soap contained in a wall-mounted or non-stationary, unbreakable soap dispenser is permissible for handwashing purposes by both staff and children. However, the antibacterial soap supplies must be stored where inaccessible to children as provided by Section 101238(g).

(i)

**POLICY**

Programs that share one large facility with separate licenses may be allowed to share a staff bathroom, i.e., one staff bathroom may be shared by several (two to three) different programs. For programs licensed on school sites, including preschools and school-age programs, the licensed program may utilize the staff bathroom located in the school office as meeting requirements under this section, provided the office is open and available for use by the licensed program during the hours the licensed program is in operation. No waiver is required to share bathrooms on school sites.

**101239    FIXTURES, FURNITURE, EQUIPMENT, AND SUPPLIES**  
(Continued)

**101239**

(i) **POLICY (Continued)**

In addition to sharing staff bathrooms, other common areas, such as staff break rooms, storage space, office space, food preparation areas, etc., may be shared. However, a waiver would be required to approve an alternative to the specified regulation. Additionally, each program shall ensure that staffing ratios are met at all times.

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(o)(1) **PROCEDURE**

Check the playground equipment to see that there are no bolts or rusty screws exposed.

(q) **PROCEDURE**

Contact a local poison control center for guidance when suspicious materials are discovered.

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**101239.1    NAPPING EQUIPMENT**

**101239.1**

(c)(4) **PROCEDURE**

Document whether the center or the children’s authorized representatives will be responsible for cleaning bedding.

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**101417 TODDLER COMPONENT IN AN INFANT CENTER****101417**

(2)

**POLICY**

Children with identified special needs may be allowed to remain in a toddler program past the age of 30 months when the program is determined to still be appropriate for the child, and the child's needs are determined to be compatible with other children in the toddler program. There should be a statement from the child's authorized representative in the child's file indicating that they agree to allow the child to remain in the toddler program. The child's Medical Assessment as required by Section 101220 would need to be updated to provide information about the child's developmental history and needs. The physician should specify that the child's needs would be met by continuing to be in care in the toddler program. The child care center would need to have a plan for ensuring that the child's special problems and needs are appropriately met in the toddler program.

See Section 101220 (b)(3). The center would also need to provide information indicating that they have assessed the compatibility of the child with the other children in the toddler program, and determined that the needs of all children can be met. The above conditions should be included in a time-limited exception to allow the child to remain. The exception should include provisions for assessing the child presence in the toddler program at frequent intervals, no longer than every six months.

**SUBCHAPTER 1 – RESERVED**

**SUBCHAPTER 2 – INFANT CARE CENTERS**

**ARTICLE 7 PHYSICAL ENVIRONMENT**

**101438.1 INFANT CARE GENERAL SANITATION**

**101438.1**

(b)(1)

**POLICY**

The use of antibacterial soap is permissible as dispenser soap. See Section 101339(b)(2) for antibacterial soap policy.

## SUBCHAPTER 3 – SCHOOL-AGE CHILD CARE CENTER

## INTRODUCTION

**101482 ISSUANCE OF A SCHOOL-AGE CHILD CARE CENTER LICENSE 101482  
(LICENSED/EXEMPT BEFORE- AND/OR AFTER-SCHOOLPROGRAMS)****POLICY**

Because it is becoming more common for licensed and exempt before- and/ or after-school programs to operate simultaneously on the same premises, several policy clarifications are being provided to address the special problems that these situations can pose.

Exempt School-Age Programs

A school-age program can be exempt for any of the following reasons:

- Exempt under Title 22, Section 101158, and Health and Safety Code Section 1596.792. (**NOTE:** Under Title 22, Section 101158(a)(8), and Health and Safety Code Section 1596.792(h), an extended day care program operated by a public or private school is exempt from licensure. This exemption includes an extended day care program that is operated by a public or private school at a single site and serves children from multiple schools if all of the schools are located in the same school district.)
- Exempt because it is part of an exempt pilot project established by the Legislature. The “6 to 6” program in San Diego, created by Assembly Bill 181, Chapter 851, Statutes of 1999, is an example of such a program (see Health and Safety Code Section 1596.7927). This pilot project sunsets January 1, 2002 unless legislation extending its provisions is enacted.
- Exempt because the school is the site of an exempt after-school program operated under the After-School Learning and Safe Neighborhoods Partnerships Program (see Education Code Section 8482). These programs are operated with grant money awarded by the California Department of Education to local educational agencies, or to a city, county, or nonprofit organization in partnership with, and with the approval of, a local educational agency or agencies. By law, these programs must have a 1:20 staff-to-child ratio and must not exceed 20 hours per week. (Notes: A copy of the grant award letter should be kept on file at each exempt school site. As an alternative, the school district or the local education agency may provide the Regional Office with a copy of the grant award letter and a list of the exempt school sites for the administrative file. Questions or complaints regarding one of these exempt programs should be initially referred to the school site principal for clarification of the school district’s policies regarding the After-School Learning and Safe Neighborhoods Partnerships Program.

**101482 ISSUANCE OF A SCHOOL-AGE CHILD CARE CENTER LICENSE 101482**  
(Continued)**(LICENSED/EXEMPT BEFORE- AND/OR AFTER-SCHOOL PROGRAMS)****POLICY** (Continued)

- If issues cannot be resolved at that level, questions or complaints should be referred to California Department of Education Healthy Start and After-School Partnerships Office at (916) 657-3558, phone; or (916) 657-4611, fax).

Twenty-First Century Program

After-school programs funded by the federal Twenty-First Century program are not exempt just because of their funding source. These programs may or may not need to be licensed based on the configuration of the program. Evaluate these programs on a case-by-case basis.

Allowance of Additional Children

In addition, under Health and Safety Code Section 1596.807, an exempt or a licensed extended day care program can serve additional children who are not from the school or the school district if the following criteria are met:

- a. The children are four years and nine months of age or older. And:
- b. The number of additional children, including dependent children living within the same household as a child attending the school, does not exceed 15 percent of the total enrollment of the extended day care program. The enrollment of the extended day care program (including the additional 15 percent) can never exceed the enrollment during the regular school day. (Without the last provision, attendance in the extended day care program would probably jump during school holidays and become unmanageable.) Example: 400 enrolled in school, 340 must be from the school, 60 from outside (400 multiplied by 15% = 60); or 100 enrolled in the extended day care program, 85 children must be from the school, 15 from the outside (100 multiplied by 15% = 15).

**PROCEDURE**

If the licensee operates both licensed and exempt before- and/or after-school programs at the same site, the licensee must do the following:

1. Provide a clear description of the areas used for the licensed program.
2. In accordance with Title 22, Section 101173, revise the plan of operation to indicate that the licensee operates both licensed and exempt programs at the same site. Include any other related changes that affect the licensed program, such as sharing indoor activity space as specified in Evaluator Manual Section 101538.3.

**101482 ISSUANCE OF A SCHOOL-AGE CHILD CARE CENTER LICENSE 101482**  
(Continued)**(LICENSED/EXEMPT BEFORE- AND/OR AFTER-SCHOOL PROGRAMS)****PROCEDURE** (Continued)

3. In accordance with Title 22, Section 101219, clarify in the admission agreement that the licensee operates both licensed and exempt programs at the same site.
4. For the exempt program, provide specific beginning/ending dates and times during the day that the program operates.
5. Unless the exempt program falls under Title 22, Section 101158, demonstrate why the program is exempt. For example, for exempt programs operated under the After-School Learning and Safe Neighborhoods program, a copy of the grant award letter may be kept on file at each exempt site. If the licensee fails to provide proof of the program's exempt status, make a note to that effect in the file and follow the procedures for operating over capacity.

For other information regarding licensed/exempt after-school programs operating simultaneously on a public or private school site, please see the following:

- Evaluator Manual Section 101482 (Issuance of a School-Age Child Care Center License)
- Evaluator Manual Section 101515 (School-Age Child Care Director Qualifications and Duties)
- Evaluator Manual Section 101516.5 (Teacher-Child Ratio: Flexible Ratios at Beginning/End of Day)
- Evaluator Manual Section 101516.5 (Teacher-Child Ratio: Use of a "Buddy System" for Going to the Bathroom)
- Evaluator Manual Section 101516.5 (Teacher-Child Ratio: Use of an Aide in Place of a Teacher When Children Are Being Transported)
- Evaluator Manual Section 101538.2 (Outdoor Activity Space for School-Age Children: Planned Activities)
- Evaluator Manual Section 101538.3 (Indoor Activity Space for School-Age Children: Shared Space)
- Evaluator Manual Section 101538.3 (Indoor Activity Space for School-Age Children: Program Separation)
- Evaluator Manual Section 101538.3 (Indoor Activity Space for School-Age Children: Planned Activities)

## SUBCHAPTER 3 - SCHOOL-AGE CHILD CARE CENTER

## ARTICLE 6 CONTINUING REQUIREMENTS

101482 ISSUANCE OF A SCHOOL-AGE CHILD CARE CENTER  
LICENSE

101482

## POLICY

It is the Department's policy to foster flexibility in the use of space in school-age child care centers operated on a functioning school site. For example, sometimes school personnel ask licensed school-age programs to move into alternate space on short notice. If the Department has not already inspected the alternate space, the move may be delayed until a licensing visit can be made. To the extent possible, it is the Department's policy to avoid such delays. This policy only applies to school-age programs operated on a functioning school site.

## PROCEDURE

1. As part of the plan of operation required in Title 22, Section 101173, have the licensee/applicant identify any alternate space/rooms that the school-age program may wish to use in the future. Any capacity issues relating to current space vs. alternate space must also be addressed in the plan of operation.
2. At the pre-licensing visit, inspect and pre-approve the alternate space identified by the applicant/licensee in the plan of operation.
3. If the licensee intends to actually move into any of the pre-approved alternate space, he or she must do the following:
  - Notify the Department immediately of the date of the move and the alternate space to be occupied by the school-age child care center.
  - In accordance with Title 22, Section 101173(b)(7), revise the plan of operation and/or the facility sketch to indicate which alternate rooms are now to be used by the school-age child care center. Mail a copy of the revised plan of operation and/or facility sketch to the Regional Office.
4. Do not make another site visit to re-inspect the pre-approved alternate space unless the District Office determines it is necessary based on individual circumstances at the site, the facility's compliance history, etc.
5. If the licensee intends to move into alternate space that has not been pre-approved (including portable buildings), follow normal procedures and make a licensing visit to inspect the space prior to use.

**101515 SCHOOL-AGE CHILD CARE DIRECTOR  
QUALIFICATIONS AND DUTIES****101515**

(b)

**POLICY**

Where both a licensed and an exempt before-and/or after-school program operate at the same time on the same premises, it is the Department's policy to allow the director of the licensed program to also be the director/site supervisor of the exempt program.

**PROCEDURE**

1. The director of the licensed program must meet the requirements of Title 22, Section 101515.
2. In accordance with Title 22, Section 101173(b)(5), the licensee must revise the plan of operation to reflect that the director of the licensed program is also serving as the director/site supervisor of the exempt program. The director's duty statement should be revised to: a) include the new duties that the director will assume with regard to the exempt program; and b) demonstrate how the director intends to meet the duties of both the licensed and exempt programs.
3. In accordance with Title 22, Section 101215.1(f), if the director is absent, the director must leave a fully qualified teacher in charge of the licensed program. Where the director of the licensed program is also the director of the exempt program, this applies only to the licensed program—since licensing laws and regulations do not apply to exempt programs.
4. The director must be able to meet the needs of the licensed program while also working as the director/site supervisor of the exempt program.
  - If the director is not able to meet the needs of the licensed program, cite the licensee under Title 22, Section 101216(a), for failure to meet the needs of children in care.
  - If the Regional Office determines that the director is not able to meet the needs of the licensed program on a continuous basis, cite the licensee for failure to meet the terms of the facility's plan of operation submitted pursuant to Title 22, Section 101173. The facility's plan of correction must include a revised plan of operation indicating separate directors for the licensed and exempt programs.

## 101516.5 TEACHER-CHILD RATIO

101516.5

(a) **POLICY**

Bus/van drivers who transport school-age children to and from child day care facilities are not required to meet any of the teacher education requirements. Bus/van drivers, whether employed by or contracted for the facility, are required to have a license to operate a bus/van per Section 101225 and a criminal record clearance and child abuse index check per Section 101170. Teacher-child ratio requirements go into effect when the child arrives at the center (when they are signed in per Section of 101526.1 and are signed out per Section 101529.1). If the children are on a field trip requiring bus/van transportation, staffing ratios would be enforceable on the bus/van.

**PROCEDURE**

Make sure that documentation regarding appropriate criminal record clearances and child abuse index checks is at the facility for each bus/van driver who transports children whether they are employed by or contracted for by the facility. Ask for facility policy regarding field trips to verify teacher-child ratios are being maintained for trips involving bus/van transportation.

(b) **POLICY**  
**(FLEXIBLE RATIOS AT BEGINNING/END OF DAY)**

A licensed school-age center may exceed the teacher-child ratios in Title 22, Section 101516.5, by 15 percent during “transition times” when children are entering and leaving the center. The following applies to transition times:

- a. each transition time can be no longer than one hour (60 minutes);
- b. only two transition times a day are allowed under this policy; and
- c. transition times cannot be consecutive.

The purpose of this policy is to allow licensed school-age centers some flexibility in staffing ratios when children check into and out of the center and the center’s population may fluctuate slightly as a result. This means that during the designated transition times, the staffing ratio may be 1:16.

The 15 percent is calculated by multiplying 15 percent by 14 (based on the school-age teacher-child ratio of 1:14). Thus, under this policy, a school-age teacher could supervise up to 16 children during “transition times.” This policy does not in any way relieve the licensee of the responsibility to provide adequate care and supervision to children.

## 101516.5 TEACHER-CHILD RATIO (Continued)

101516.5

**PROCEDURE**

1. A waiver to Title 22, Section 101516.5(b) (teacher-child ratios for school-age programs), is required.
2. A licensee of a school-age center who wishes to obtain a waiver to Title 22, Section 101516.5(b), for the purposes of this policy must submit a revised plan of operation to the Department per Title 22, Section 101173(c). Documentation in the revised plan of operation must explain why the waiver is necessary and will constitute the substantiating evidence for the waiver required by Title 22, Section 101175(b)(2). Assuming the waiver request is acceptable, the Regional Office will grant the waiver when approving the plan of operation.
3. As part of the revised plan of operation, the licensee must identify the proposed hours of transition time.
4. In the admission agreement required by Title 22, Section 101219, the licensee must inform each child's authorized representative of the center's modified staffing ratio during transition times when children are entering and leaving the center.

**(USE OF A "BUDDY SYSTEM" FOR GOING TO THE BATHROOM)**

It is the Department's policy to allow a school-age child who is in the fourth grade or above to go to the bathroom with another child who is also in the fourth grade or above without being supervised by a teacher or an aide when this can be done safely. This is known as the "buddy system." It recognizes that school-age children in this age group go to the bathroom on their own during the regular school day. (However, a child who is in the fourth grade or above cannot escort a younger child to the bathroom; both "buddies" must be in the fourth grade or above.)

Use of the buddy system will be allowed only when an individual assessment of the circumstances indicates that it is appropriate. This policy does not in any way relieve the licensee of the responsibility to provide adequate care and supervision to children.

**PROCEDURE**

1. A waiver to Title 22, Section 101229(a)(1), is required if a school-age program is to allow school-age children to go to the bathroom using the buddy system. (This section states that no child shall be left without the supervision of a teacher at any time, except if an aide is being used in place of a teacher to supervise napping children or escort children to the bathroom.)

**101516.5 TEACHER-CHILD RATIO (Continued)****101516.5****PROCEDURE (Continued)**

2. A licensee of a school-age center who wishes to obtain a waiver to Title 22, Section 101229(a)(1), must submit a revised plan of operation to the Department per Title 22, Section 101173(c). Documentation in the revised plan of operation must explain why the waiver is necessary and will constitute the substantiating evidence for the waiver required by Title 22, Section 101175(b)(2). If the waiver request is acceptable, the District Office will grant the waiver when approving the plan of operation. The District Office will grant or deny the waiver based on an assessment by licensing staff of the appropriateness of using the buddy system under the circumstances described by the licensee.
3. As part of the revised plan of operation, the licensee must:
  - Describe the individual circumstances of the program site and the children being served. Describe the facility’s policies and procedures that ensure proper safeguards are in place. Topics to be covered include but are not limited to:
    - a. Age and gender of the children (opposite-sex “buddies” are acceptable if determined to be appropriate by the center and if approved by the District Office as part of the plan of operation).
    - b. Assessment of whether it is appropriate for all of the children to participate in the “buddy system” based on such factors as the maturity level and social skills of individual children.
    - c. Location of the bathrooms in relation to the rooms used for the school-age program. Are the bathrooms nearby? Or are they located in another building, away from the program site? Are the bathrooms located in or near areas unfamiliar to the children?
    - d. General safety of the children, including children’s familiarity with their surroundings; whether the program will operate after dark; and whether other people have access to the premises.
  - Indicate that school-age children using the buddy system will only be permitted to use the bathrooms located closest to the school-age program.
  - Demonstrate what kind of sign-out plan the center will use to ensure that center staff know which children are gone and for how long.

## 101516.5 TEACHER-CHILD RATIO (Continued)

101516.5

## PROCEDURE (Continued)

- Indicate how many pairs of children (“buddies”) will be allowed to go to the bathroom at one time. This will be determined in part by how many bathroom stalls are available. The Department recommends that no more than two pairs of children be allowed to go to the bathroom at one time.
5. If the waiver is approved, the licensee must inform each child’s authorized representative, in the admission agreement required by Title 22, Section 101219, that children who are in the fourth grade and above will be allowed to go to the bathroom on their own using the buddy system.

(b)

## POLICY

**(USE OF AN AIDE IN PLACE OF A TEACHER WHEN CHILDREN ARE BEING TRANSPORTED)**

In a licensed school-age center, an aide who is at least 18 years old, and who meets the requirements of Title 22, Sections 101216 and 101216.2, may be used in place of a teacher to supervise children when children are being transported from one site to another for a facility function. For example, this policy would apply when children are being transported in a van or bus to a facility field trip, or when children are being picked up at school by a facility van or bus and transported to the center for after-school care. It would also apply when a group of children are walking from one facility function to another on the center or school campus premises.

The 1:14 ratio applies when aides are used in a transporting/walking capacity. Aides cannot be used in place of teachers to supervise children while children are at the site of the facility function itself.

In addition, aides who are used in this capacity must have current course completion cards in pediatric first aid and cardiopulmonary resuscitation (CPR). Under Title 22, Section 101216(f), and Health and Safety Code Section 1596.866(b), a staff member, trained in pediatric first aid and CPR must be present with the children when children are at the child care center or offsite for center activities (including en route to facility activities.)

## PROCEDURE

1. A waiver to Title 22, Section 101216.2(e)(1), is required if aides are to be used in this capacity. (This section specifies that an aide can only work under the direct supervision of a teacher.)

**101516.5 TEACHER-CHILD RATIO (Continued)****101516.5****PROCEDURE (Continued)**

2. A licensee of a school-age center who wishes to obtain a waiver to Title 22, Section 101216.1(e)(1), must submit a revised plan of operation to the Department per Title 22, Section 101173(c). Documentation in the revised plan of operation must explain why the waiver is necessary and will constitute the substantiating evidence for the waiver required by Title 22, Section 101175(b)(2). Assuming the waiver request is acceptable, the District Office will grant the waiver when approving the plan of operation.
3. As part of the revised plan of operation, the licensee must:
  - Identify anticipated facility functions and activities during which an aide would be used in place of a teacher to supervise children when they are being transported from one site to another for a facility function.
  - Indicate that aides who are used in this capacity will have current course completion cards in pediatric first aid and CPR.
  - Indicate how emergencies would be handled when an aide is used in place of a teacher to supervise children when they are being transported from one site to another for a facility function.
4. In the admission agreement required by Title 22, Section 101219, the licensee must inform each child's authorized representative that the center will use aides in place of teachers to supervise children when children are being transported from one site to another for a facility function.

## SUBCHAPTER 3 - SCHOOL-AGE CHILD CARE CENTER

## ARTICLE 6 CONTINUING REQUIREMENTS

101538.2 OUTDOOR ACTIVITY SPACE FOR  
SCHOOL-AGE CHILDREN

101538.2

(b) POLICY  
(PLANNED ACTIVITIES)

Where both a licensed and an exempt before and/or after-school program operate at the same time on the same premises, it is the Department's policy to allow children in the licensed and exempt programs to be commingled for planned activities. Planned activities are joint, time-limited activities; and may take place either outdoors (or indoors; see Evaluator Manual Section 101538.3(b), Planned Activities.) Examples of planned activities include parties, baseball games, and watching a movie. This policy is not a blanket approval to allow children to be commingled at any time at the convenience of the programs. Planned activities are intended to be short-term activities—not ongoing, daylong activities.

Teacher-child ratios specified in Title 22, Section 101516.5, must be met during planned activities for children in the licensed program. Staff-child ratios paralleling those specified in Title 22, Section 101516.5, must be met during planned activities for children in the exempt program. Since children from the licensed and exempt programs will be commingled during planned activities, staff from the licensed and exempt programs will share supervisory duties and must ensure that appropriate staffing ratios are maintained at all times during planned activities.

In addition, children attending school-age programs in two geographically separate sites may be commingled for planned activities. This would be considered a field trip for children from a licensed program who travel to another site to participate in a planned activity.

Children not enrolled in either the licensed or the exempt school-age program CANNOT participate in planned activities.

## PROCEDURE

**Square Footage/Fencing**

Determine the square-footage/fencing requirements for the shared outdoor activity space based on the following:

- Public or private school sites. If the shared outdoor activity space is located on a functioning public or private school site, then the site is exempt from square-footage and fencing requirements for child care centers per Title 22, Section 101538.2(c)(1) and Health and Safety Code Section 1596.806(b).
- Other sites. If the shared outdoor activity space is NOT located on a functioning public or private school site, then there must be 75 square feet of outdoor activity space per child [Title 22, Section 101238.2(a)]. There must also be a fence at least four feet high around the outdoor activity space [Title 22, Section 101238.2(g)].

**101538.2 OUTDOOR ACTIVITY SPACE FOR  
SCHOOL-AGE CHILDREN (Continued)****101538.2****Plan of Operation**

In accordance with Title 22, Section 101173, the licensed school-age program must revise its plan of operation to:

1. Indicate that the licensed program intends to participate in planned activities with an exempt program.
2. Identify the site of the exempt program.
3. Identify the planned activities.
4. Identify the circumstances under which planned activities will take place, how often planned activities are expected to occur, and approximately how long planned activities are expected to last.
5. Indicate how the licensed and exempt programs intend to meet staffing ratios during planned activities. (See Policy above.)
6. Include any additional information as necessary.

**101538.3 INDOOR ACTIVITY SPACE FOR  
SCHOOL-AGE CHILDREN****101538.3****POLICY  
(SHARED SPACE)**

A licensed school-age program may share indoor activity space with an exempt school-age program or other group of children participating in an organized activity on the same premises. For example, a licensed program may use one end of a multi-purpose room and an exempt program or a Girl Scout troop may use the other end.

Under this policy, the following applies:

- No commingling, except as specified in Evaluator Manual Sections 101538.2(b) and 101538.3(b). These Evaluator Manual sections allow commingling of children in licensed and exempt after-school programs during “planned activities.”
- Program separation must be maintained.
- Children not enrolled in a school-age program or involved in an authorized organized activity CANNOT participate in activities taking place in the shared space.

**101538.3 INDOOR ACTIVITY SPACE FOR  
SCHOOL-AGE CHILDREN (Continued)****101538.3****PROCEDURE****Square Footage/Room Capacity**

Determine the square-footage requirements for the shared indoor activity space based on the following:

- Public or private school sites. If the shared indoor activity space is located on a functioning public or private school site, the site is exempt from square-footage requirements for child care centers per Title 22, Section 101538.3(c)(1) and Health and Safety Code Section 1596.806(a). But the capacity per room cannot exceed the capacity for which the room is approved for use during the school day [Title 22, Section 101538.3(d)].
- Other sites. If the shared indoor activity space is NOT located on a functioning public or private school site, then there must be 35 square feet of indoor activity space per child in the licensed school-age program. [Title 22, Section 101238.3(a)]. When space is shared with the exempt program, the capacity cannot exceed the capacity for which the room(s) have been approved for fire-clearance purposes.

**Shared Space/Program Separation**

- A waiver is NOT required for shared space itself. However, a waiver may or may not be required for how program separation is to be maintained while space is being shared.
- A waiver is NOT required where program separation is to be achieved by use of a wall or four-foot partition as specified in Title 22, Section 101538.3(b)(1).
- A waiver to Title 22, Section 101538.3(b)(1), IS required where program separation is to be achieved through supervision and/or scheduling. In this case, see Evaluator Manual Section 101538.3(b), Program Separation (No. 2 under Procedure).

**101538.3 INDOOR ACTIVITY SPACE FOR  
SCHOOL-AGE CHILDREN (Continued)****101538.3****PROCEDURE (Continued)****Plan of Operation**

Whether or not the licensee seeks a waiver to Title 22, Section 101538.3(b)(1), if indoor activity space is to be shared, the licensee must revise the facility's plan of operation in accordance with Title 22, Section 101173(b). In the revised plan operation, the licensee must:

1. Indicate that the licensed school-age program intends to share indoor activity space.
2. Identify the indoor activity space to be shared.
3. Identify the group or groups of children that will share the indoor activity space.
4. Identify how the programs are to be kept separate. See Evaluator Manual Section 101538.3(b), Program Separation.
5. Specify the types of activities that will occur in the shared indoor activity space.
6. Specify the time(s) when the indoor activity space will be shared.
7. Include any additional information as necessary.

(b)

**POLICY****(PROGRAM SEPARATION)**

Where both a licensed and an exempt after-school program operate at the same time on the same premises, separation between the programs must be maintained. This separation may be achieved in one or a combination of the following ways:

- Physical separation as specified in Title 22, Section 101538.3(b). Physical separation is interpreted to mean a wall, or a movable wall or partition at least four feet high that is safe for use around children. In contrast, use of such items as a string of cones or garbage cans, or a curtain, to create physical separation would not be appropriate. These items may be moved by children and may even present a hazard to children.
- Separation achieved through supervision and/or scheduling.

**101538.3 INDOOR ACTIVITY SPACE FOR  
SCHOOL-AGE CHILDREN (Continued)****101538.3****PROCEDURE**

1. If program separation is to be achieved through supervision and/or scheduling, a waiver to Title 22, Section 101538.3(b), is required. This regulation is interpreted to apply to separation between a licensed child care program and any other child care program.
2. A licensee who wishes to obtain a waiver to Title 22, Section 101538.3(b)(1), must submit a revised plan of operation to the Department per Title 22, Section 101173(c). Documentation in the revised plan of operation must explain why the waiver is necessary and will constitute the substantiating evidence for the waiver required by Title 22, Section 101175(b)(2). Assuming the waiver request is acceptable, the child care Regional Office will grant the waiver when approving the plan of operation.
3. As part of the revised plan of operation, the licensee must submit a clear description of the indoor activity areas to be used by the licensed program.
4. In the case of separation achieved through supervision, the licensee must document in the revised plan of operation how staff in the licensed program will set parameters and supervise children to ensure separation from the exempt program. For example, children from the licensed program may be using the west end of the cafeteria while children from the exempt program use the east end. How does the licensee intend to ensure that children in the licensed program stay in the west end of the cafeteria?
5. In the case of separation achieved through scheduling, the licensee must submit a written schedule that identifies the following: a) which rooms will and will not be rotated; b) time slots when the rooms will be rotated; and c) which program will occupy which room(s) during which time slot(s).

(b)

**POLICY****(PLANNED ACTIVITIES)**

Please see Evaluator Manual Section 101538.2(b), Outdoor Activity Space (Planned Activities), for the Department's policy on "planned activities" for licensed and exempt after-school programs. This policy also applies to indoor activity space.