

Article 4. ENFORCEMENT PROVISIONS

101192 DENIAL OF A RENEWAL LICENSE 101192

Repealed by Manual Letter No. CCL-98-11, effective 11/1/98.

101193 DEFICIENCIES IN COMPLIANCE 101193

(a) If during a licensing evaluation the evaluator determines that a deficiency exists, the evaluator shall issue a notice of deficiency unless the deficiency is not serious and is corrected during the visit.

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- (1) The following are examples of regulations which if not complied with nearly always result in a serious deficiency.
- (A) Section 101161 relating to limitations on the capacity or ambulatory status of the children in care.
 - (B) Section 101170 relating to criminal record clearances.
 - (C) Section 101171 relating to fire clearances.
 - (D) Section 101172 relating to water supply.
 - (E) Section 101223 relating to personal rights.
 - (F) Section 101224 relating to telephone service.
 - (G) Section 101226(e) relating to storing and dispensing medications.
 - (H) Section 101227 relating to food storage, preparation and service.
 - (I) Section 101238 relating to the safety of children's accommodations.
 - (J) Section 101239(e)(1), (2), and (3) relating to hot water temperature and toilet facilities.
 - (K) Section 101239(f) relating to storage and disposal of solid wastes.
 - (L) Any other regulation the violation of which the Department deems to be a serious deficiency as defined in Section 101152s.(3).

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101193 DEFICIENCIES IN COMPLIANCE

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- (b) Prior to completion of an evaluation or other licensing visit, the person in charge of the child care center shall meet with the evaluator to discuss any deficiencies noted, to jointly develop a plan for correcting each deficiency, and to acknowledge receipt of the notice of deficiency.
- (c) The evaluator shall, at the completion of the visit, personally deliver the notice of deficiency to the licensee or the person in charge of the child care center. If the licensee is not present, the evaluator shall also mail a copy of the notice to the licensee.
 - (1) If the person in charge of the child care center refuses to accept the notice, the evaluator shall make a note of the refusal on the notice and leave a copy of the notice at the center. The evaluator shall also mail a copy of the notice to the licensee.
- (d) The notice of deficiency shall be in writing and shall include the following:
 - (1) A citation of the law or regulation that has been violated.
 - (2) A description of the deficiency stating the manner in which the licensee failed to comply with a specified law or regulation and, if applicable, the particular place or area of the child care center in which the deficiency occurred.
 - (3) The plan developed, as specified in (b) above, for correcting each deficiency.
 - (4) A date by which each deficiency shall be corrected.
 - (A) In determining the date for correcting a deficiency, the evaluator shall consider the following factors:
 - 1. The potential hazard presented by the deficiency.
 - 2. The number of children affected.
 - 3. The availability of equipment or personnel necessary to correct the deficiency.
 - 4. The estimated time for delivery and/or installation of necessary equipment.

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- (B) The date for correcting a deficiency shall not be more than 30 calendar days following service of the notice of deficiency unless the evaluator determines that the deficiency cannot be completely corrected in 30 calendar days.

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101193 DEFICIENCIES IN COMPLIANCE

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(Continued)

- (C) If the date for correcting the deficiency is more than 30 calendar days following service of the notice of deficiency, the notice shall specify the corrective actions that must be taken within 30 calendar days to begin correction.
- (D) If civil penalties are assessed, the evaluator shall require correction of the deficiency within 24 hours and shall specify on the notice of deficiency the date by which the correction must be made.
- (5) The amount of the civil penalty assessed and the date the penalty begins.
- (6) The address and telephone number of the Department's office responsible for reviewing notices of deficiencies for the area in which the child care center is located.

NOTE: Authority cited: Sections 1596.81 and 1596.99, Health and Safety Code. Reference: Sections 1596.81(b), 1596.98 and 1596.99, Health and Safety Code.

101194 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE

101194

**CHILD CARE CENTER GENERAL
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- (a) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.
 - (1) A follow-up visit shall be conducted within 10 working days following the date(s) of correction specified in the notice of deficiency unless the licensee has demonstrated that the deficiency was corrected as required.
 - (2) No penalty shall be assessed unless a follow-up visit is conducted.
- (b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the evaluator shall issue a notice of penalty.
- (c) A notice of penalty shall be in writing and shall include:
 - (1) The amount of the penalty assessed and the date the payment is due.
 - (2) The name and address of the agency responsible for collecting of the penalty.
- (d) When an immediate penalty has been assessed pursuant to Sections 101195(c), (d) and (e), and correction is made when the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Sections 1596.81 and 1596.99, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.852, 1596.853, 1596.98 and 1596.99, Health and Safety Code.

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101195 PENALTIES

101195

- (a) A penalty of \$50 per day, per cited violation, shall be assessed for serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (b) Notwithstanding Section 101195(a) above, an immediate penalty of \$100 per cited violation per day for a maximum of five (5) days shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1596.871(b) has not obtained a California clearance or criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 101170(e) prior to working, residing or volunteering in the facility.
 - (1) Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days.
 - (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.99.
 - (3) Progressive civil penalties specified in Sections 101195(d) and (e) below shall not apply.
- (c) Notwithstanding (a) above, an immediate penalty of \$150 per day shall be assessed if a child becomes sick, is injured or dies as a result of a deficiency.
- (d) When a child care center is cited for a deficiency and violates the same regulation subsection within a 12-month period, the child care center shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (e) When a child care center that was cited for a deficiency subject to the immediate penalty assessment specified in Section 101195(d) above violates the same regulation subsection within a 12-month period of the last violation, the child care center shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$150 per day, per cited violation, shall be assessed until the deficiency is corrected.
 - (1) For purposes of Sections 101195(d) and (e) above, a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number.

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An example of the same regulation subsection are Sections 101216.1(d)(1) and 101216(d)(3).
Sections 101216.1(b) and 101216.1(d) are not the same regulation subsection.

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101195 PENALTIES (Continued)

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- (f) If any deficiency is not corrected by the date specified in the notice of deficiency, a penalty shall be assessed for each day following that date until compliance has been demonstrated.
 - (1) Immediate penalty assessment as specified in Sections 101195(c), (d) and (e), shall begin on the day the deficiency is cited.
- (g) If a licensee or his/her representative reports to the Department that a deficiency has been corrected, the penalty shall cease as of the day the Department receives either verbal or written notification that the correction was made.
 - (1) If the evaluator determines the deficiency was not corrected as reported, civil penalties shall continue to accrue from the date of the original citation.
 - (2) If it can be verified that the correction was made prior to the date of notification, the penalty shall cease as of that earlier date.
- (h) If necessary, a site visit shall be made immediately or within five working days to confirm that the deficiency has been corrected.
- (i) If an immediate civil penalty is assessed and the deficiency is corrected on the same day, the penalty shall still be assessed for that day.
- (j) Unless otherwise ordered by the Department all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated in the notice.
- (k) The Department has the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (j) above.

NOTE: Authority cited: Sections 1596.81 and 1596.893(b), Health and Safety Code. Reference: Sections 1596.81(b), 1596.871, 1596.893, 1596.98 and 1596.99, Health and Safety Code.

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GENERAL LICENSING REQUIREMENTS**

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101196 REVIEW OF LICENSING DECISIONS

101196

- (a) Any person may request a review of a licensing decision against him/her within 10 working days of receipt of the written decision unless an administrative action pursuant to the California Administrative Procedure Act has commenced against the person.
 - (1) "Licensing decision" means a decision that applies to notices of deficiency, civil penalties, and waivers and exceptions.
 - (2) If the review is of a deficiency that has not been corrected, civil penalties continue to accrue during the review process.
- (b) The review specified in (a) above shall be conducted by a higher-level staff person than the person who made the licensing decision and issued the related notice of deficiency, civil penalty, or waiver or exception.
- (c) The reviewer may uphold, amend or dismiss the licensing decision; or may extend the date specified for the correction of a deficiency.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1596.842, Health and Safety Code.

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- (A) The \$200 per day penalty shall continue until the operator ceases operation or submits a completed application pursuant to Sections 101198(a)(1)(A) and (B).
- (2) On the 10th calendar day after the mailing of the notice of denial or upon receipt of the denial notice by the operator, whichever occurs first.
 - (A) The \$200 per day penalty shall continue until the operator ceases operation.

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101198 UNLICENSED FACILITY PENALTIES (Continued) 101198

- (c) If the unlicensed operator or his/her representative reports to the Department that unlicensed operation has ceased, the penalty shall cease as of the day the Department receives the notification.
 - (1) A site visit shall be made immediately or within five working days to verify that the unlicensed child care center operation has ceased.
 - (2) Notwithstanding (c) above, if the unlicensed child care center operation has not ceased, penalties shall continue to accrue without interruption from the date of initial penalty assessment.
- (d) All penalties shall be due and payable upon receipt of the Notice for Payment from the Department, and shall be paid by check or money order made payable to the Department as indicated in the notice.
- (e) The Department has the authority to file a claim in any court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (d) above.

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- (f) Payment of civil penalties or application for licensure in response to a citation under this section do not permit the operation of a child care center without a license.

Health and Safety Code 1596.80 states:

No person, firm, partnership, association, or corporation shall operate, establish, manage, conduct, or maintain a child day care facility in this state without a current valid license therefor as provided in this act.

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(g) A person assessed civil penalties may appeal the penalty under Section 101196.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.80, 1596.891 and 1596.892, Health and Safety Code.

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101198.1

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**101198.1 DENIAL OR REVOCATION OF LICENSE FOR
FAILURE TO PAY CIVIL PENALTIES**

101198.1

- (a) The licensee shall be responsible for paying civil penalties.
 - (1) Unless otherwise provided, the transfer, surrender, forfeiture or revocation of a license shall not affect the licensee's responsibility for paying any civil penalties accrued while the license was in effect.
- (b) The Department shall have the authority to deny or revoke any license for failure to pay civil penalty assessments.
 - (1) The Department shall have the authority to approve payment arrangements acceptable to the Department.
 - (2) The Department shall have the authority to approve the form of payment.
 - (3) The licensee's failure to pay civil penalty assessments pursuant to a payment plan approved by the Department may result in the denial or revocation of any license, and/or any other appropriate action.
- (c) Any denial or revocation of the license for failure to pay civil penalties may be appealed as provided by Health and Safety Code Section 1596.887.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81, 1596.871, 1596.887, 1596.98, and 1596.99, Health and Safety Code.

101200 (Cont.)

101200 INSPECTION AUTHORITY OF THE DEPARTMENT

101200

(a) The Department has the inspection authority specified in Health and Safety Code Sections 1596.852, 1596.853 and 1596.8535.

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(1) Health and Safety Code Section 1596.852 provides:

Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, this act or the regulations adopted by the department pursuant to the act.

(2) Health and Safety Code Section 1596.853 provides in part:

(a) Any person may request an inspection of any child day care facility in accordance with the California Child Day Care Facilities Act by transmitting to the department notice of an alleged violation of applicable requirements prescribed by the statutes or regulations of this state. A complaint may be made either orally or in writing.

(b) The substance of the complaint shall be provided to the licensee no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall disclose the name of any person mentioned in the complaint, except the name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter.

(c) Upon receipt of a complaint, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, the department shall make an onsite inspection within 10 days after receiving the complaint, except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be promptly informed of the department's proposed course of action.

(d) (1) Upon issuance of a license for a child day care facility or upon denial, revocation, or temporary suspension of a license or within 24 hours of a finding that physical abuse

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or sexual abuse has occurred, the department shall notify the resource and referral agency funded under Section 8210 of the Education Code for that jurisdiction.

- (2) The resource and referral agency shall be notified of the final resolution.

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101200 INSPECTION AUTHORITY OF THE DEPARTMENT
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(2) With the exception of parents seeking local day care service, any other entity specified in subdivision (b) of Section 1596.86 may request that the department provide the notification described in paragraph (1).

(e) When the department substantiates an allegation which it deems to be serious, in a facility funded by the Child Development Division of the State Department of Education pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code it shall notify the Child Development Division.

(3) Health and Safety Code Section 1596.8535(a) provides:

"Notwithstanding any other provision of law, the department shall conduct any authorized inspection, announced site visit, or unannounced site visit of any child daycare facility only during the period beginning one hour before and ending one hour after the facility's normal business hours or at any time childcare services are being provided. This subdivision shall not apply to the investigation of any complaint received by the department if the department determines that an inspection or site visit outside the time period beginning one hour before, and ending one hour after, the facility's normal operating hours is necessary to protect the health or safety of any child in the facility."

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(b) The Department has the authority to interview children or staff without prior consent.

(1) The licensee shall ensure that provisions are made for private interviews with any children or staff members.

(c) The Department has the authority to inspect, audit, and copy child or child care center records upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the requirements in Sections 101217(c) and 101221(d).

(1) The licensee shall ensure that provisions are made for the examination of all records relating to the operation of the child care center.

(d) The Department has the authority to observe the physical condition of the children, including conditions that could indicate abuse, neglect or inappropriate placement.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.852, 1596.853, and 1596.8535, Health and Safety Code.

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"(1) When a license is on probation.

"(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

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101201 EVALUATION VISITS (Continued)

101201

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"(3) When an accusation against a licensee is pending.

"(4) In order to verify that a person who has been ordered out of a child day care center by the department is no longer at the facility.

"(c) The department shall conduct an [random] annual unannounced visit to no less than 10 percent of facilities not subject to an evaluation under subdivision (b)...

"(d) Under no circumstances shall the department visit a community care facility less often than once every five years.

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(b) The Department has the authority to make any number of other visits to a child care center in order to determine compliance with applicable laws and regulations.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.852, 1596.98, 1596.99, 1597.08 and 1597.09, Health and Safety Code.

101202 SERIOUS DEFICIENCIES

101202

Renumbered to Section 101193 by Manual Letter No. CCL-98-11, effective 11/1/98.

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Article 5. ADMINISTRATIVE ACTIONS

101205 DENIAL OF LICENSE

101205

(a) Except as specified in Section 101181, which provides for issuance of a provisional license based upon substantial compliance, the Department shall deny an application for a license if the applicant is not in compliance with applicable laws and regulations. The Department shall issue the denial in accordance with Health and Safety Code Section 1597.11.

- (1) The Department shall deny an application if the applicant fails to pay any civil penalty assessments, unless payment arrangements acceptable to the Department have been made.
- (2) The Department may deny an application for licensure or revoke a license if the applicant/licensee, staff and/or volunteers violate Health and Safety Code Section 1596.885.

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(A) Section 1596.885 of the Health and Safety Code states:

"The department may deny an application for or suspend or revoke any license, registration, or special permit issued under this act upon any of the following grounds and in the manner provided in this act:

"(a) Violation by the licensee, registrant, or holder of a special permit of this act or of the rules and regulations promulgated under this act.

"(b) Aiding, abetting, or permitting the violating of this act or of the rules and regulations promulgated under this act.

"(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state.

"(d) The conviction of a licensee, or other person specified in Section 1596.871, at any time before or during licensure, of a crime as defined in Section 1596.871.

"(e) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients."

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(3) The Department shall deny an application for licensure for grounds specified in Health and Safety Code Section 1596.952(b).

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(A) Health and Safety Code Section 1596.952(b) states:

"(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Section 1596.851 and 1596.8898."

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Cont.)

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

- (4) An application shall not be denied solely because the applicant is a parent who has administered or will continue to administer corporal punishment not constituting child abuse, as defined in Penal Code Section 11165(g) or Health and Safety Code Section 1531.5(c), on his/her own child(ren).

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- (A) Section 11165, subdivision (g) of the Penal Code states:

Child abuse means a physical injury which is inflicted by other than accidental means on a child by another person. Child abuse also means the sexual assault of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). Child abuse also means the neglect of a child or abuse in out-of-home care.

- (B) Section 273(a) of the Penal Code states:

Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 4 or 6 years.

Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

- (C) Section 273(d) of the Penal Code states:

Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4 or 6 years, or in the county jail for not more than one year.

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Cont.)

101205 **DENIAL OF LICENSE**
(Continued)

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- (1) Health and Safety Code Section 1596.879 provides in part:

Immediately upon the denial of any application for a license or for a special permit, the department shall notify the applicant in writing. Within 15 days after the department mails the notice, the applicant may present his or her written petition for a hearing to the department. Upon receipt by the department of the petition, the petition shall be set for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

- (2) Health and Safety Code Section 1596.887 provides in part:

Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

In all proceedings conducted in accordance with this action, the standard of proof to be applied shall be the preponderance of the evidence.

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- (d) Notwithstanding any appeal action, the child care center is unlicensed and shall not operate pending adoption by the Director of a decision on the denial action.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81, 1596.856, 1596.885, 1596.891, 1596.95, 1596.952(b), and 1597.05, Health and Safety Code; and Sections 15374 and 15376, Government Code.

101206 REVOCATION OR SUSPENSION OF LICENSE

101206

- (a) The Department has the authority to suspend or revoke a license on any of the grounds specified in Health and Safety Code Section 1596.885.

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- (1) Health and Safety Code Section 1596.885 provides:

"The department may deny an application for or suspend or revoke any license, registration, or special permit issued under this act upon any of the following grounds and in the manner provided in this act:

"(a) Violation by the licensee, registrant, or holder of a special permit of this act or of the rules and regulations promulgated under this act.

"(b) Aiding, abetting, or permitting the violating of this act or of the rules and regulations promulgated under this act.

"(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state.

"(d) The conviction of a licensee, or other person specified in Section 1596.871, at any time before or during licensure, of a crime as defined in Section 1596.871.

"(e) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients."

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- (b) The Department has the authority to revoke a license pursuant to Health and Safety Code Section 1596.866, which requires child care personnel as specified to complete health and safety training.
- (c) Proceedings to hear a revocation action, or a revocation and temporary suspension action, shall be conducted pursuant to Health and Safety Code Sections 1596.886 and 1596.887.

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101206 REVOCATION OR SUSPENSION OF LICENSE 101206
(Continued)

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- (1) Health and Safety Code Section 1596.886 provides in part:

The Director may temporarily suspend any license or special permit prior to any hearing when, in the opinion of the Director, the action is necessary to protect any child of the child day care facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The Director shall notify the licensee or holder of the special permit of the temporary suspension and the effective date thereof and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee or the holder of the special permit, the Director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until such time as the hearing is completed and the Director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the Director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

- (2) Health and Safety Code Section 1596.887 provides in part:

Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be the preponderance of the evidence.

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101206 REVOCATION OR SUSPENSION OF LICENSE
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(3) Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code provides in part:

(A) When the Director intends to seek revocation of a license, he/she shall notify the licensee of the proposed action; shall concurrently serve the licensee with an accusation; and advise the licensee of the right to a hearing.

(d) For a revocation and temporary suspension action, the Director shall request the Office of Administrative Hearings to hold the hearing as soon as possible but not later than 30 calendar days after receipt of the notice of defense.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.866, 1596.885 and 1596.886, Health and Safety Code.

101207 LICENSEE/APPLICANT COMPLAINTS

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(a) Each licensee/applicant has the right, without prejudice, to bring to the Department's attention either of the following:

(1) Any alleged misapplication or capricious enforcement by any departmental representative of the regulations in this chapter; or

(2) Any differences of opinion between the licensee/applicant and any departmental representative concerning the proper application of the regulations in this chapter.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code.

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101208 EXCLUSIONS

101208

(a) The Department may prohibit an individual from serving as a member of the board of directors, executive director, or officer; being employed or allowed in a licensed facility, as specified in Health and Safety Code Sections 1596.8897 and 1596.8898.

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(1) Health and Safety Code Section 1596.8897 reads:

"(a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

"(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

"(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

"(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1596.871.

"(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

"(5) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

"(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

"(c)(1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

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"(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

"(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

"(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

"(B) Within 60 days of receipt of a notice of defense by the employee or prospective employee pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

"(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

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"(d) An excluded person who files an appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

"(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

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"(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, the

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executive director, or an officer of a licensee or the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

"(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

"(h)(1)(A) In cases where the excluded person appealed the exclusion order and there is a decision and order upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

"(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

"(2)(A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

"(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

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(2) Health and Safety Code Section 1596.8898 reads:

"(a)(1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

"(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

"(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

"(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

"(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

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"(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

"(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

"(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

"(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1598.8897 or any other law.

"(e) The department may determine not to exclude a person from, or remove him or her from the position of, a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has been determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances or conditions that either have been corrected or are no longer in existence."

HANDBOOK ENDS HERE

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.8897 and 1596.8898, Health and Safety Code.

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101210 UNLICENSED FACILITY ADMINISTRATIVE APPEAL**

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Repealed by Manual Letter No. CCL-98-11, effective 11/1/98.