

Article 3. APPLICATION PROCEDURES**101167 TRANSFER AND SALE****101167**

- (a) A license is not transferable.
- (1) If the sale of a licensed child care center will result in the issuance of a new license, the requirements of Health and Safety Code Section 1597.14 apply.

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Health and Safety Code Section 1597.14 reads in pertinent part:

- (a) Notwithstanding Section 1596.858, in the event of a sale of a licensed child day care center where the sale will result in a new license being issued, the sale and transfer of property and business shall be subject to both of the following:
- (1) The licensee shall provide written notice to the department and to the child's parent or his or her legal guardian of the licensee's intent to sell the child day care center at least 30 days prior to the transfer of the property or business, or at the time that a bona fide offer is made, whichever period is longer.
- (2) The licensee shall, prior to entering into an admission agreement, inform the child's parent or his or her legal guardian, admitted to the facility after notification to the department, of the licensee's intent to sell the property or business.
- (b) Except as provided in subdivision (e), the property and business shall not be transferred until the buyer qualifies for a license or provisional license pursuant to this chapter.
- (1) The seller shall notify, in writing, a prospective buyer of the necessity to obtain a license, as required by this chapter, if the buyer's intent is to continue operating the facility as a child day care center. The seller shall send a copy of this written notice to the licensing agency.
- (2) The prospective buyer shall submit an application for a license, as specified in Section 1596.95, within five days of the acceptance of the offer by the seller.
- (c) No transfer of the facility shall be permitted until 30 days have elapsed from the date when notice has been provided to the department pursuant to paragraph (1) of subdivision (a).

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- (d) The department shall give priority to applications for licensure that are submitted pursuant to this section in order to ensure timely transfer of the property and business. The department shall make a decision within 60 days after a complete application is submitted on whether to issue a license pursuant to Section 1596.95.
- (e) If the parties involved in the transfer of the property and business fully comply with this section, then the transfer may be completed and the buyer shall not be considered to be operating an unlicensed facility while the department makes a final determination on the application for licensure.

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- (2) In the event of the sale and transfer of property and business, the applicant (buyer) shall be issued an Emergency Approval to Operate (EAO) (LIC 9117 [4/93]) if the applicant (buyer) complies with Health and Safety Code Section 1597.14.
 - (3) The applicant (buyer) who is issued an EAO (LIC 9117 [4/93]) shall perform all the duties, functions and responsibilities required of a licensee.
 - (4) Failure to comply with licensing laws and regulations under this section, as determined by the Department, shall result in the denial of the application for a license. This denial shall also constitute termination of the EAO (LIC 9117 [4/93]).
 - (5) The Department shall provide to the applicant (buyer) written notification of the denial. This notice shall be effective immediately upon receipt.
- (b) "A bona fide offer," as specified in Health and Safety Code Section 1597.14(a)(1), means a proposal by the buyer to purchase the child care center with definite terms in writing communicated to the seller and accompanied by a cash deposit.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1597.14, Health and Safety Code.

101168 **APPLICANT QUALIFICATIONS** **101168**

- (a) Any adult may apply for a license regardless of age, sex, race, religion, color, political affiliation, national origin, disability, marital status, actual or perceived sexual orientation, or ancestry.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code; and Section 51, Civil Code.

101169 **APPLICATION FOR LICENSE** **101169**

- (a) Any adult, partnership, corporation, county, city, public agency or other governmental entity wishing to obtain a license shall fill out and file with the Department an Application Booklet (LIC 281A [12/96]), as well as submit to the Department the documents specified in Section 101169(d) below.

- (1) Applicants for licensure of a combination center may file one application.

- (A) Licensees requesting the addition of a toddler component to their preschool or infant care program shall submit an amended application consisting of an Application for a Child Day Care Center License (LIC 200A [12/92]); a program description; a sketch of the center showing where the toddler component will be located; a schedule for outdoor activities; and, if necessary, a fire clearance. The toddler program component is considered an extension of the preschool or infant care license.

- (2) Each separately licensed component of a single program shall be capable of independently meeting the provisions of applicable regulations as determined by the Department.

- (3) The Department has the authority to issue one license to a single program, or to a separately licensed component of a single program, that is located in multiple buildings at a common address.

- (b) Prior to filing an LIC 281A (12/96) and the documents specified in Section 101169(d) below, the applicant shall attend an orientation provided by the Department.

- (1) The orientation shall cover, but not be limited to, the following areas:

- (A) How to complete the application process.
(B) Scope of child care center operation subject to regulation by the Department.

- (2) A licensee applying for another child care center license need not attend another orientation within two years of completing a previous orientation.

- (3) An applicant applying for more than one child care center license is only required to attend one orientation.

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- (c) The applicant/licensee shall cooperate with the Department in providing verification and/or documentation as requested by the Department.
- (d) The LIC 281A (12/96) and supporting documents shall together contain the following:
 - (1) Name (or proposed name) and address of the child care center.
 - (2) Name, and residence and mailing addresses of applicant.
 - (A) If the applicant is a partnership, copies of the partnership agreement and all documents governing the partnership, as well as the name and principal business address of each partner.
 - (B) If the applicant is a corporation or association, the name, title and principal business address of each officer, executive director and member of the governing board.
 - (C) If the applicant is a corporation that issues stock, the name and address of each person owning more than 10 percent of stock in the corporation.
 - (D) If the applicant is a corporation, a copy of the articles of incorporation, the constitution, the bylaws, and the board resolution authorizing the submission of the application.
 - (E) If the applicant is a corporation, each member of the board of directors, executive director, and any officer shall list the name of all facilities which they have been licensed to operate, employed by or a member of the board of the directors, executive director or an officer.
 - (3) If the applicant is leasing or renting the premises of the child car center, a copy of the lease or rental agreement and the name, address, and telephone number of the property owner.
 - (4) The category of child care center to be operated.
 - (5) Maximum number of children to be served.
 - (6) Age range and the categories of children to be served including, but not limited to, children with disabilities and/or nonambulatory children.
 - (7) Hours or periods of operation of the child care center.
 - (8) Name of administrator.
 - (9) Information required by Health and Safety Code Section 1596.95(d).

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Health and Safety Code section 1596.95(d) provides:

Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in any child day care facility or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200), 2 (commencing with Section 1250), or 3 (commencing with Section 1500).

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- (10) Information required by Health and Safety Code Section 1596.95(e).
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Health and Safety Code section 1596.95(e) provides:

Disclosure of any revocation or other disciplinary action taken or in the process of being taken against a license held or previously held by the entities specified in subdivision (d).

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- (11) Name, address and telephone number of the city or county fire departments, the district providing fire protection services, or the State Fire Marshal's office with jurisdiction in the area where the child care center is located.
- (12) A plan of operation as specified in Section 101173.
- (13) Fingerprint cards as specified in Section 101170.
- (14) Requests to check the Child Abuse Registry as required by Health and Safety Code Section 1596.877.

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Vehicle Code section 27315(d)(2) provides:

For purposes of this section the phrase, "properly restrained by a safety belt" means that the lower (lap) portion of the belt crosses the hips or upper thighs of the occupant and the upper (shoulder) portion of the belt, if present, crosses the chest in front of the occupant.

Vehicle Code section 27360 provides:

- (a) Except as provided in Section 27363, a parent, legal guardian, or driver shall not transport on a highway in a motor vehicle, as defined in paragraph (1) of subdivision (c) of Section 27315, a child or ward who is under eight years of age, without properly securing that child in a rear seat in an appropriate child passenger restraint system meeting applicable federal motor vehicle safety standards.
- (b) Subdivision (a) does not apply to a driver if the parent or legal guardian of the child is also present in the motor vehicle and is not the driver.

Vehicle Code section 27360.5 provides:

- (a) A parent, legal guardian, or driver shall not transport on a highway in a motor vehicle, as defined in paragraph (1) of subdivision (c) of Section 27315, a child or ward who is eight years of age or older, but less than 16 years of age, without properly securing that child or ward in an appropriate child passenger restraint system or safety belt meeting applicable federal motor vehicle safety standards.
- (b) Subdivision (a) does not apply to a driver if the parent or legal guardian of the child is also present in the motor vehicle and is not the driver.

Vehicle Code section 27363 provides:

- (a) The court may exempt from the requirements of this article any class of child by age, weight, or size if it is determined that the use of a child passenger restraint system would be impractical by reason of physical unfitness, medical condition, or size. The court may require satisfactory proof of the child's physical unfitness, medical condition, or size and that an appropriate special needs child passenger restraint system is not available.
- (b) In case of a life-threatening emergency, or when a child is being transported in an authorized emergency vehicle, if there is no child passenger restraint system available, a child may be transported without the use of that system, but the child shall be secured by a seatbelt.

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- (c) A child weighing more than 40 pounds may be transported in the backseat of a vehicle while wearing only a lap safety belt when the backseat of the vehicle is not equipped with a combination lap and shoulder safety belt.
- (d) Notwithstanding Section 27360, a child or ward under eight years of age who is four feet nine inches in height or taller may be properly restrained by a safety belt, as defined in paragraph (2) of subdivision (d) of Section 27315, rather than by a child passenger restraint system.
- (e) Notwithstanding Section 27360, a child or ward under eight years of age may ride properly secured in an appropriate child passenger restraint system meeting applicable federal motor vehicle safety standards in the front seat of a motor vehicle under any of the following circumstances:
 - (1) There is no rear seat.
 - (2) The rear seats are side-facing jump seats.
 - (3) The rear seats are rear-facing seats.
 - (4) The child passenger restraint system cannot be installed properly in the rear seat.
 - (5) All rear seats are already occupied by children seven years of age or under.
 - (6) Medical reasons necessitate that the child or ward not ride in the rear seat. The court may require satisfactory proof of the child's medical condition.
- (f) Notwithstanding subdivision (e), a child shall not be transported in a rear-facing child passenger restraint system in the front seat of a motor vehicle that is equipped with an active frontal passenger airbag.

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101170 **CRIMINAL RECORD CLEARANCE** **101170**

- (a) The Department shall conduct a criminal record review of all persons specified in Health and Safety Code Section 1596.871(b). The Department has the authority to approve or deny a facility license, or employment, residence or presence in the facility, based on the results of this review.

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- (1) Section 1596.871(a) of the Health and Safety Code states:

Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5 subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license or for obtaining a criminal record of such an applicant pursuant to this section. The following shall apply to the criminal record information:

- (A) If the California Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

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- (B) If the California Department of Social Services finds that the applicant, or any person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the California Department of Social Services shall cease processing the application until the conclusion of the trial.
 - (C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the California Department of Social Services with a statement of that fact.
 - (D) If the California Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).
 - (E) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a).
- (2) Section 1596.871(b) of the Health and Safety Code provides in part:

In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

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

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- (E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.
 - (F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.
 - (G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.
 - (H) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the State Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a California Department of "Education contract." The State Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.
 - (I) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the California Department of Education who have completed a criminal records clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.
- (3) Nothing in this section shall prevent a licensee from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

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101170 **CRIMINAL RECORD CLEARANCE** (Continued) **101170**

- (b) The following individuals are exempt from the requirement to submit fingerprints:
- (1) A volunteer who is a relative, legal guardian, or foster parent of a child in the facility.
 - (2) A volunteer that provides time-limited specialized services if all of the following apply:
 - (A) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (B) The volunteer spends no more than 16 hours per week at the facility.
 - (C) The volunteer is not left alone with children in care.
 - (3) A volunteer who is a senior citizen if all of the following apply:
 - (A) The senior citizen participates in a Foster Grandparent Program under the authority of the National Senior Service Corps and administered by the Corporation for National Service.
 - (B) The facility has an agreement with the foster grandparent program concerning the placement of the foster grandparent.
 - (C) The foster grandparent is supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (D) The foster grandparent is not left alone with children in care.
 - (4) A student who is enrolled or participating at an accredited educational institution if all of the following apply:
 - (A) The student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (B) The facility has an agreement with the educational institution concerning the placement of the student.
 - (C) The student spends no more than 16 hours per week at the facility.
 - (D) The student is not left alone with the children in care.
 - (5) A third-party repair person, or similar retained contractor, if all of the following apply:
 - (A) The individual is hired for a defined, time-limited job.

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- (B) The individual is not left alone with children.
- (C) When children are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (6) A medical professional, as defined in Section 101152(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity if all of the following apply:
 - (A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.
 - (B) The individual is providing time-limited specialized clinical care or services.
 - (C) The individual is providing care or services within the individual's scope of practice.
 - (D) The individual is not a community care facility licensee and is not employed, retained, or contracted by the licensee.
- (7) Employees of a licensed home health agency who have a contract with a child's parent or guardian and are in the facility at the request of that parent or guardian.
 - (A) The exemption shall not apply to an individual who is employed, retained or contracted by the licensee.
- (8) An attendant or facilitator for a child with a developmental disability who is visiting the child or providing direct care and supervision to the child.
 - (A) The exemption shall not apply to an individual who is employed, retained or contracted by the licensee.

101170 CRIMINAL RECORD CLEARANCE (Continued) 101170

- (c) Prior to the Department issuing a license, the applicant and the administrator shall obtain a California criminal record clearance or exemption.

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- (1) Section 1596.871(a)(5) of the Health and Safety Code states in part:

An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Health and Safety Code Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Health and Safety Code Section 1596.886.

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- (d) All individuals subject to criminal record review shall, be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.

- (1) A person signing the LIC 508 must:

- (A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 101170(k) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.
- (B) If convicted of a crime other than a minor traffic violation as specified in Section 101170(k), provide information regarding the conviction.

- (2) The licensee shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 101170(e)(1), prior to the individual's employment or initial presence in the child care facility.

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| 101170 | CRIMINAL RECORD CLEARANCE (Continued) | 101170 |
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- (A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Social Services.

- (e) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1596.871 shall prior to working, residing or volunteering in a licensed facility:
 - (1) Obtain a California clearance or a criminal record exemption as required by the Department or
 - (2) Request a transfer of a criminal record clearance as specified in Section 101170(f) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 101170.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

- (f) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:
 - (1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).
 - (2) A copy of the individual's driver's license, or
 - (3) A valid identification card issued by Department of Motor Vehicles, or
 - (4) A valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (5) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

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- (6) Section 1596.871(h) of the Health and Safety Code states:
- (A) The California Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

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- (g) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 101217.
- (h) Violation of Section 101170(e) will result in an immediate assessment of civil penalties of one hundred dollars (\$100) per violation per day for a maximum of five (5) days by the Department.
- (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.
- (i) Violation of Section 101170(e) may result in a denial of the license application or suspension and/or revocation of the license.
- (j) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting.
- (1) Documentation shall be available for inspection by the Department.
- (k) If the criminal record transcript of any of the individuals specified in Health and Safety Code Section 1596.871(b) discloses a plea or verdict of guilty, or a conviction following a plea of nolo contendere, for any crime other than a minor traffic violation for which the fine was less than \$300 and an exemption pursuant to Section 101170.1(a) has not been granted, the Department shall take the following actions:
- (1) For initial applicants, denial of the application.
- (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
- (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

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101170 CRIMINAL RECORD CLEARANCE (Continued) 101170

- (n) If the Department determines that any licensee or individual specified in Health and Safety Code Section 1596.871(b) is arrested for a crime for which, if convicted, an individual is not eligible, by law, to receive an exemption, pending completion of its investigation into the facts underlying the arrest, the Department may take the following actions:
 - (1) If the arrested individual is a licensee, the Department may notify the licensee, by telephone or in writing, to immediately cease operation for up to 30 days.
 - (2) If the individual arrested is not a licensee, the Department may notify the licensee and the individual associated with the facility, by telephone or in writing, that the individual may not be present in the facility for up to 30 days.

- (o) After the Department notifies the licensee, pursuant to Section 101170(o)(1), or the individual pursuant to Section 101170(o)(2), he or she may present a written appeal that:
 - (1) he or she is not the individual who was arrested,
 - (2) he or she has not been arrested for a crime that by law an individual is not eligible to receive an exemption, or
 - (3) he or she was arrested for a crime that by law an individual is not eligible to receive an exemption but the charges have been dropped or reduced to a crime that by law an individual would be eligible to receive an exemption.

The appeal shall contain the licensee's or individual's current address and telephone number. After the Department receives the appeal and any supporting documentation, it shall review the appeal and notify the licensee or individual of its decision within five (5) working days.

- (p) Should the Department determine at any time during the 30 days referred to in Sections 101170(o)(1) and (o)(2) that the criminal charges have been dropped or reduced to a charge for a crime that by law an individual would be eligible to receive an exemption, the Department shall immediately rescind the notice.

- (q) Nothing in this section shall be interpreted to supercede the Department's authority under Sections 1596.886 and 1596.8897 of the Health and Safety Code.

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

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101170.1 CRIMINAL RECORD EXEMPTION **101170.1**

- (a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 101170.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
 - (2) Any person who has been convicted of a felony;
 - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1596.871(c)(2);
 - (4) Any person who has been convicted of any crime specified below:
 - (A) Battery
 - (B) Shooting at Inhabited Dwelling
 - (C) Corporal Injury on Spouse/Cohabitant
 - (D) Discharging Firearm with Gross Negligence
 - (E) Exhibiting Weapon/Firearm
 - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
 - (G) Criminal Threat to Harm or Injure Another Person
 - (H) Cruelty to Animals
 - (I) Willful Harm or Injury to Child; or
 - (5) Any other person ordered to be removed by the Department.
- (b) In addition to the requirements of Section 101170.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
- (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation - Denial, LIC 300B (Rev. 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 9/03).

101170.1 CRIMINAL RECORD EXEMPTION (Continued) **101170.1**

- (c) After a review of the criminal record transcript, the Department may grant an exemption if:
- (1) The applicant/licensee requests an exemption for himself or herself, or
 - (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
 - (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
 - (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.
- (d) To request a criminal record exemption, a licensee or license applicant must submit information that indicates that the individual meets the requirements of Section 101170.1(c)(4). The Department will notify the licensee or license applicant and the affected individual, in concurrent, separate notices, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in an exemption request.
 - (2) The notice will list the information that must be submitted to request a criminal record exemption.
 - (3) The information must be submitted within forty-five (45) days of the date of the Department's notice.
 - (A) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 101170.1(e).
 - (B) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.
 - (C) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may deny the exemption request.

101170.1 CRIMINAL RECORD EXEMPTION (Continued) **101170.1**

- (D) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:
 - 1. Chooses not to request the exemption and
 - 2. Chooses not to employ or terminates the individual's employment after receiving notice of the individual's criminal history, or
 - 3. Removes the individual who resides in the facility after receiving notice of the individual's criminal history.

- (e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
 - (1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.
 - (2) Period of time since the crime was committed and number of offenses.
 - (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
 - (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
 - (5) A full and unconditional pardon granted by the Governor.
 - (6) Character references.
 - (A) All character references shall be on a Reference Request form (LIC 301E – Exemptions [Rev. 7/03]).
 - (7) A certificate of rehabilitation from a superior court.
 - (8) Evidence of honesty and truthfulness as revealed in exemption application documents.
 - (A) Documents include, but are not limited to:
 - 1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and
 - 2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.

101170.1 CRIMINAL RECORD EXEMPTION (Continued) **101170.1**

- (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.
- (f) The Department shall also consider the following factors in evaluating a request for an exemption:
 - (1) Facility and type of association.
 - (2) The individual's age at the time the crime was committed.
- (g) The Department may deny the individual's exemption request if:
 - (1) The individual fails to provide documents requested by the Department, or
 - (2) The individual fails to cooperate with the Department in the exemption process.
- (h) The reasons for any exemption granted or denied shall be in writing and shall be kept by the Department.
 - (1) Exemption denial notices shall specify the reason the exemption was denied.
- (i) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.
- (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
 - (1) Makes a knowingly false or misleading statement regarding:
 - (A) Material relevant to their application for a criminal record clearance or exemption,
 - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or
 - (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
 - (2) Is on probation or parole.
 - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 101170.1(j)(2).

101170.1 CRIMINAL RECORD EXEMPTION (Continued) 101170.1

- (k) The Department shall consider granting a criminal record exemption for an individual when the individual's criminal record history meets all of the applicable criteria specified in Sections 101170.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 101170.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.
- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
 - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (6) The individual has not been convicted of a violent felony.
 - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Section 101170.1(k)(1) through (5) above shall begin from the last date of conviction(s).
- (l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 101170.1(k)(1) through (6).
- (m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1596.871(f) of the Health and Safety Code.

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Health and Safety Code Section 1596.871(f) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

- (1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.
- (2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
- (3) Penal Code Section 203 – Any mayhem.
- (4) Penal Code Section 206 - Felony torture.
- (5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
- (6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.
- (7) Penal Code Section 215 – Carjacking.
- (8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.
- (9) Penal Code Section 243.4 – Sexual battery.
- (10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.
- (11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.
- (12) Penal Code Section 264.1 – Rape in concert.
- (13) Penal Code Section 266 – Enticing a minor into prostitution.
- (14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
- (15) Penal Code Section 266h(b) – Pimping a minor.
- (16) Penal Code Section 266i(b) – Pandering a minor.

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- (17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
- (18) Penal Code Section 267 – Abduction for prostitution.
- (19) Penal Code Section 269 – Aggravated assault of a child.
- (20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
- (21) Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
- (22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
- (23) Penal Code Section 285 – Incest.
- (24) Penal Code Section 286 – Sodomy.
- (25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.
- (26) Penal Code Section 288a – Oral copulation.
- (27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
- (28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.
- (29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.
- (30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.
- (31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.
- (32) Penal Code Section 311.3 – Sexual exploitation of a child.

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- (33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.
- (34) Penal Code Section 311.10 – Advertising or distributing child pornography.
- (35) Penal Code Section 311.11 – Possessing child pornography.
- (36) Penal Code Sections 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.
- (37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.
- (38) Penal Code Section 368 – Elder or dependent adult abuse.
- (39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.
- (40) Penal Code Section 451(a) or (b) – Arson.
- (41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.
- (42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.
- (43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.
- (44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.
- (45) Penal Code Sections 664/187 – Any attempted murder.
- (46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.
- (47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
- (48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
- (49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.

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101170.1 CRIMINAL RECORD EXEMPTION (Continued) **101170.1**

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- (50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.
- (51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.
- (52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

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- (n) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 101170.1(n)(1) through (4) below:
 - (1) The individual does not have a demonstrated pattern of criminal activity;
 - (2) The individual has no more than one conviction;
 - (3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and
 - (4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.
- (o) At the Department’s discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.
- (p) If the Department denies or cannot grant a criminal record exemption the Department shall:
 - (1) For initial applicants, deny the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

101170.1 CRIMINAL RECORD EXEMPTION (Continued) **101170.1**

- (4) For individuals residing in the facility, including spouses of the applicant or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

- (q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 101170.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
 - (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.
 - (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.
 - (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 101170.1(q)(1) above, the Department may, according to the provisions in Section 101170.1 et seq., grant or deny the subsequent request for an exemption.
 - (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 101170.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

101170.1 CRIMINAL RECORD EXEMPTION (Continued) **101170.1**

- (r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
 - (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 9/03).
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state or the United States Government if the individual is not a California resident.
 - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).
- (s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:
 - (1) The basis on which the Department granted the exemption;
 - (2) The nature and frequency of client contact in the new position;
 - (3) The category of facility where the individual wishes to transfer;
 - (4) The type of clients in the facility where the individual wishes to transfer;
 - (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or
 - (6) Whether the exemption meets current exemption laws or regulations.
- (t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

101170.1 CRIMINAL RECORD EXEMPTION (Continued) **101170.1**

- (u) At the Department's discretion, an exemption may be rescinded if it is determined that:
- (1) The exemption was granted in error or
 - (2) The exemption does not meet current exemption laws or regulations or
 - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.
- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
 - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
 - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
 - (4) The individual is convicted of a subsequent crime.
- (w) If the Department rescinds an exemption the Department shall:
- (1) Notify the licensee and the affected individual in writing; and
 - (2) Initiate an administrative action.
- (x) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may initiate an administrative action to protect the health and safety of clients.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.871, 1596.885, and 1596.8897, Health and Safety Code, and Gresher v. Anderson. (2005) 127 Cal. App. 4th 88.

101170.2 CHILD ABUSE CENTRAL INDEX **101170.2**

- (a) Prior to granting a license for a child care center, the Department shall conduct a Child Abuse Central Index (CACI) review pursuant to Health and Safety Code Section 1596.877 and Penal Code Section 11170(b)(3). The Department shall check the CACI for the applicant(s) and all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1596.871(a) and shall have the authority to approve or deny a facility license, employment, or presence in the facility based on the results of the review.
 - (1) The applicant shall submit the Child Abuse Central Index checks (LIC 198A [3/99]) for all individual's required to be checked directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 101170(a).
 - (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A [3/99]) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(f).
 - (2) The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license based upon a report from the CACI unless the Department substantiates the allegation of child abuse.
- (b) Subsequent to licensure, all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1596.871, shall complete a Child Abuse Central Index check (LIC 198A [3/99]) prior to employment or initial presence in the child care facility.
 - (1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A [Rev. 3/99]) directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 101170(d).
 - (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A [3/99]) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(f).

101171 FIRE CLEARANCE 101171

- (a) All child care centers shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal.
 - (1) The request for fire clearance shall be made through and maintained by the Department.
- (b) The applicant shall notify the Department if the child care center plans to enroll children who are nonambulatory, as defined in Section 101152n.(1), so that an appropriate fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal can be obtained prior to the acceptance of such children.

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- (1) Persons who use supportive restraints pursuant to Section 101223.1 are nonambulatory.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.809, 1596.81, 1596.95 and 1597.95, Health and Safety Code.

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| 101172 | WATER SUPPLY CLEARANCE | 101172 |
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- (a) All child care centers where water for human consumption is from a private source shall meet the following requirements:
- (1) As a condition of initial licensure, the applicant shall provide evidence of an onsite inspection of the source of the water and a bacteriological analysis that establishes the safety of the water. The inspection and the bacteriological analysis shall be conducted by the local health department, the California Department of Health Services or a licensed commercial laboratory.
 - (2) Subsequent to initial licensure, the licensee shall provide evidence of a bacteriological analysis of the private water supply as frequently as is necessary to ensure the safety of the children, but no less frequently than specified in the following table:

| LICENSED CAPACITY | ANALYSIS REQUIRED | PERIODIC SUBSEQUENT ANALYSIS |
|------------------------------|------------------------------|---------------------------------------------------------------------------------------|
| 6 or fewer | Initial licensing | Not required unless evidence supports the need for such analysis to protect children. |
| 7 through 15 | Initial licensing | Annually |
| 16 through 24 | Initial licensing | Semiannually |
| 25 or more | Initial licensing | Quarterly |

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

101173 **PLAN OF OPERATION** **101173**

- (a) Each licensee shall have and keep on file a current written, definitive plan of operation. A copy of the plan shall be submitted to the Department with the license application.
- (b) The plan and related materials shall contain the following:
 - (1) Statement of purposes, and program methods and goals.
 - (2) Statement of admission policies and procedures.
 - (3) A copy of the admission agreement.
 - (4) Administrative organization, if applicable.
 - (5) Staffing plan, qualifications and duties, if applicable.
 - (6) Plan for in-service education of staff if required by regulations governing the specific child care center category.
 - (7) A sketch of the building(s) to be occupied, including a floor plan that describes the capacities of the buildings and the uses intended, the room dimensions, and the rooms to be used for nonambulatory children; and a sketch of the grounds that shows buildings, driveways, fences, storage areas, pools, gardens, recreation areas and other space used by the children. All sketches shall show dimensions.
 - (8) Sample menus and a schedule for one calendar week indicating the time of day that meals and snacks are to be served.
 - (9) Transportation arrangements provided by the applicant/licensee for children who do not have independent arrangements.
 - (10) Rate-setting policy including, but not limited to, a policy on refunds.
 - (11) Consultant and community resources to be utilized by the child care center as part of its program.
- (c) Any proposed changes in the plan of operation that affect services to children shall be subject to departmental approval prior to implementation and shall be reported as specified in Section 101212.
- (d) The child care center shall operate in accordance with the terms specified in the plan of operation.

NOTE: Authority cited: Section 1596.81, Health and Safety Code; Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

101174 DISASTER AND MASS CASUALTY PLAN **101174**

- (a) Each licensee shall have a disaster and mass casualty plan of action. The plan shall be in writing and shall be readily available.
- (b) The plan shall be subject to review by the Department and shall include:
 - (1) Designation of administrative authority and staff assignments.
 - (2) Contingency plans for action during fires, floods and earthquakes including, but not limited to, the following:
 - (A) Fire safety plan.
 - (B) Means of exiting.
 - (C) Transportation arrangements.
 - (D) Relocation sites that are equipped to provide safe temporary accommodations for children.
 - (E) Supervision of children during evacuation or relocation, and contact after relocation to ensure that relocation has been completed as planned.
 - (F) Means of contacting local agencies, including but not limited to the fire department, law enforcement agencies, and civil defense and other disaster authorities.
 - (3) Any special methods and procedures necessary for the evacuation and relocation of nonambulatory children.
- (c) The licensee shall instruct all children, age and abilities permitting, and all child care personnel, including volunteers, in their duties and responsibilities under the plan.
- (d) Disaster drills shall be conducted at least every six months.
 - (1) Completion of such drills shall not require travel away from the child care center grounds or contact with local disaster agencies.
 - (2) The drills shall be documented. This documentation shall be kept in the child care center for at least one year.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

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

- (a) Unless the licensee receives prior written departmental approval for a waiver or an exception as specified in (b) below, the licensee shall maintain continuous compliance with all licensing regulations.
- (b) The Department has the authority to approve the use of alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects, under the following circumstances:
 - (1) Such alternatives shall be carried out with provisions for safe and adequate services, and shall in no instance be detrimental to the health and safety of any child in care.
 - (2) The applicant or licensee shall submit to the Department a written request for a waiver or an exception and substantiating evidence supporting the request.
 - (3) Within 30 days of the receipt of a request for a waiver or an exception, the Department shall notify the applicant or licensee in writing of the approval or denial of the request, or of the need for additional information to substantiate the request.
 - (A) The licensee shall maintain and make available for review, at the child care center, a copy of the written approval or denial.

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

101178 **APPLICATION REVIEW** **101178**

- (a) If the applicant has not submitted all materials specified in Section 101169 within 90 days of the Department's receipt of the application, the Department shall notify the applicant in writing that the application is incomplete. This notice shall describe the materials that the applicant must submit to complete the application.
 - (1) If the applicant does not complete the application within 30 days after such notice, the application shall be deemed withdrawn provided that the Department has not denied or taken action to deny the application.
 - (A) The above requirement shall not apply to child care centers under construction.
- (b) The Department shall cease review of any application under the conditions specified in Health and Safety Code Section 1596.851.

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- (1) Health and Safety Code Section 1596.851 provides:
 - (a) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a license under this act or under Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) or Chapter 3 (commencing with Section 1500), or Chapter 3.3 (commencing with Section 1569) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation. Cessation of review shall not constitute a denial of the application.
 - (b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in subdivision (a) and the application was denied within the last year, the department shall cease further review of the application under either of the following circumstances as follows:
 - (1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application 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 as specified in Section 1596.879 and the applicant did not petition for a hearing, the department shall cease further review of the application 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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The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which have been corrected or are no longer in existence. The cessation of review shall not constitute a denial of the application.

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- (2) The circumstances and conditions under which the Department may continue to review a previously denied application shall include, but not be limited to, the following:
 - (A) A fire clearance previously denied but now approved;
 - (B) An administrator who previously did not meet the minimum qualifications but now does;
or
 - (C) A person with a criminal record previously associated with the center, which was the basis for license denial, but who is now no longer associated with the center.
 - (3) This review shall not constitute approval of the application.
 - (4) If the Department ceases review of an application, the application shall be returned to the applicant. The applicant shall be responsible for requesting the Department to resume reviewing the application pursuant to Health and Safety Code Section 1596.851.
- (c) The application fee is nonrefundable.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.83, 1596.851 and 1596.95, Health and Safety Code.

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| 101179 | CAPACITY DETERMINATION | 101179 |
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- (a) A license shall be issued for a specific capacity, which shall be the maximum number of children that can be cared for at any given time. The Department may issue a license for fewer children than requested.
- (b) The number of children for which the child care center is licensed to provide care and supervision shall be determined on the basis of the Department's application review, which shall take into consideration the following:
 - (1) The fire clearance specified in Section 101171.
 - (2) The licensee's/administrator's ability to comply with applicable laws and regulations.
 - (3) Physical features of the child care center, including available space, that are necessary to comply with this chapter.
 - (4) Number of available staff to meet the care and supervision needs of the children.
 - (5) Any restrictions pertaining to the specific category of child care center.
- (c) When the license is issued for fewer children than requested, the licensee shall be notified in writing of the reasons for the limitation and of the licensee's rights to appeal the decision as specified in Section 101205.
- (d) The Department has the authority to decrease existing licensed capacity with the licensee's agreement, when there is a change in any of the factors specified in (b) above.
 - (1) If the licensee does not agree to the decrease in capacity, the Department has the authority to initiate revocation action as specified in Section 101206.
- (e) The Department is authorized to restrict care to specific individuals.
 - (1) If care and supervision are limited to specific individuals, the Department shall specify the names of the individuals in a letter to the licensee.
 - (2) Except where the limitation is requested by the licensee, the licensee shall be notified in writing of the reasons for such limitation and of the licensee's right to appeal the decision as specified in Section 101205.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81 and 1597.05, Health and Safety Code.

101180 WITHDRAWAL OF APPLICATION **101180**

- (a) An applicant may withdraw an application for a license.
- The withdrawal of the application shall be in writing.
- (1) The fee for processing the application shall be forfeited.
- (b) As specified in Health and Safety Code Section 1596.854, the Department has the authority to take action against an applicant even if the applicant has withdrawn an application for a license.

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Health and Safety Code Section 1596.854 provides in part:

The withdrawal of an application for a license ... after it has been filed with the department shall not, unless the department consents in writing to the withdrawal, deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license ... upon any ground provided by law or to enter an order denying the license ... upon any such ground.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.803 and 1596.854, Health and Safety Code.

101181 PROVISIONAL LICENSE **101181**

- (a) The Department has the authority to issue a provisional license pursuant to Health and Safety Code Sections 1596.84 and 1596.96 provided the child care center is in substantial compliance with applicable laws and regulations, as defined in Section 101152s.(4), and has submitted a completed application as specified in Section 101152c.(8).

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- (1) Health and Safety Code Section 1596.84 reads in pertinent part:

The department may issue provisional licenses to operate day care facilities which the director determines are in substantial compliance with the provisions of the licensure requirements and the rules and regulations adopted pursuant thereto, provided, that no life safety risks are involved, as determined by the director. In determining whether any life safety risks are involved, the director shall require completion of all applicable fire clearances and criminal record clearances as otherwise required by the department's rules and regulations.

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101181 PROVISIONAL LICENSE (Continued) **101181**

- (b) The Department shall not issue a provisional license if a corporate applicant's board of directors, executive director and officer are ineligible for licensure, as 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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- (c) The Department has the authority to issue a provisional license for a maximum of 90 days to otherwise qualified applicants who are not in compliance with the requirements for health and safety training as specified in Health and Safety Code Section 1596.866.
- (d) During the provisional license period, if the Department discovers any deficiencies that threaten the physical health, mental health, safety or welfare of the children, the Department has the authority to institute administrative action or civil proceedings, or to refer the case for criminal prosecution.
- (e) A provisional license terminates on the date specified on the provisional license or upon denial of the application, whichever is earlier.
- (1) Health and Safety Code Section 1596.84 specifies how long and under what circumstances a provisional license may last.

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Health and Safety Code Section 1596.84 reads in pertinent part:

... The provisional license shall expire six months from the date of issuance, or at such earlier time as the director may determine. However, the director may extend the term of a provisional license for an additional six months time, if it is determined that more than six months will be required to achieve full compliance with licensing standards due to circumstances beyond the control of the applicant, provided all other requirements for a license have been met. In no case shall a provisional license be issued for more than 12 months.

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- (f) If the Department determines after its review specified in Section 101178 that the provisional licensee does not meet licensing requirements, the application shall be denied as specified in Section 101205; the provisional license shall immediately terminate; and operation shall immediately cease.

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| 101181 | PROVISIONAL LICENSE (Continued) | 101181 |
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- (g) If the Department denies the application for a license, the applicant may appeal the denial as provided in Section 101205. Until the Director adopts a decision on the denial action, the child care center is unlicensed.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.84, 1596.866, 1596.952(b), and 1596.96, Health and Safety Code.

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

- (a) The Department shall issue a license to an applicant in accordance with the provisions of Health and Safety Code Section 1597.13 after a completed application has been compiled and upon determination that all licensing requirements have been met.

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- (1) Health and Safety Code Section 1597.13 states:

The department and any local agency with which it contracts for the licensing of day care centers shall grant or deny an application for license within 30 days after receipt of all appropriate licensing application materials, as determined by the department, after a site visit has been completed and the facility has been found to be in compliance with licensing standards. The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials.

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- (2) A separate license shall be issued for each component of a combination center.
- (3) If the application is denied, the notice of denial shall include the information specified in Section 101205.
- (b) Issuance of a license shall constitute written notice that the application is complete and has been granted.
- (c) No limitation shall be imposed on the licensee or printed on the license solely because a licensee 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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- (1) Whenever possible, the licensee shall not use corporal punishment on his/her own children in the presence of other children.

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

- (d) Except for provisional licenses as provided in Section 101181, a license remains in effect until it is:
- (1) Forfeited or surrendered as specified in Sections 101186 through 101187 and in Health and Safety Code Section 1596.858.
 - (2) Suspended or revoked as specified in Section 101206.
- (e) As a condition of licensure, child care personnel shall complete health and safety training pursuant to Health and Safety Code Section 1596.866.

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- (1) Health and Safety Code Section 1596.866 provides in pertinent part:
- (a) In addition to any other required training, at least one director or teacher at each day care center ... shall have at least 15 hours of training on preventive health practices. The training shall include pediatric cardiopulmonary resuscitation, pediatric first aid, recognition, management, and prevention of infectious diseases, including immunizations, and prevention of childhood injuries. The training may include training in sanitary food handling, child nutrition, emergency preparedness and evacuation, caring for children with special needs, and identification and reporting of signs and symptoms of child abuse.
 - (b) A day care center director shall ensure that at least one staff member who has a current certificate in pediatric first aid and pediatric cardiopulmonary resuscitation issued by [the American Red Cross or the American Heart Association, or by] a training program that has been approved by the Emergency Medical Services Authority pursuant to this section and Section 1797.191 shall be available at all times when children are present at the facility, or when children are offsite of the facility for facility activities....
 - (c) All personnel and licensees described in subdivision (a) shall complete 15 hours of preventive health practices training as described in subdivision (a) on or before January 1, 1995, and completion of the health training shall be a condition of licensure.

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.858, 1596.866, 1596.95, 1596.96 and 1596.97, Health and Safety Code.

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| 101184 | APPLICATION FOR RENEWAL OF A LICENSE | 101184 |
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Repealed by Manual Letter No. CCL-98-11, effective 11/1/98.

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| 101185 | SUBMISSION OF NEW APPLICATION | 101185 |
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- (a) A licensee shall file a new Application Booklet (LIC 281A [12/96]) and supporting documents as specified in Section 101169 whenever there is a proposed change of any of the following types:
- (1) Child care center category.
 - (A) Notwithstanding (a) and (a)(1) above, a licensee wishing to add a toddler component to its existing preschool or infant care program shall submit an amended application as specified in Section 101169(a)(1)(A). The toddler program component is considered an extension of the preschool or infant care license.
 - (2) Sale or transfer of the majority of stock.
 - (3) Separating from a parent company.
 - (4) Merger with another company.
 - (5) Change of licensee.
- (b) When a licensee proposes a change in capacity, a change in the number of nonambulatory children or a change in location, the licensee may, in lieu of filing an entirely new LIC 281A (12/96) and supporting documents as specified in Section 101169, transfer documents from an existing application to a new application. In such a case, the new application documents must include:
- (1) An Application for a Child Day Care Center License (LIC 200A [12/92]).
 - (2) A fire clearance, if necessary.
 - (3) An update of existing application documents affected by the change, as determined by the Department.

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| 101186 | CONDITIONS FOR FORFEITURE OF A CHILD CARE CENTER LICENSE (Continued) | 101186 |
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- (b) The licensee surrenders the license to the department.
- (c) The licensee moves the facility from one location to another....
- (d) The licensee is convicted of an offense specified in Section 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.
- (e) The licensee dies....
- (f) The licensee abandons the facility.

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- (2) "Licensee abandons the facility [child care center]" shall mean either of the following:
 - (A) The licensee informs the Department that the licensee no longer accepts responsibility for the child care center; or
 - (B) The Department is unable to determine the licensee's whereabouts after the following:
 - 1. The Department requests information about the licensee's whereabouts from child care center staff, if any staff can be contacted; and
 - 2. The Department has made at least one phone call per day to the licensee's last telephone number of record for five consecutive workdays with no response; and
 - 3. The Department has sent a certified letter requesting the licensee to contact the Department to the licensee's last mailing address of record with no response within seven calendar days.

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| 101186 | CONDITIONS FOR FORFEITURE OF A CHILD CARE CENTER LICENSE (Continued) | 101186 |
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- (b) If the licensee dies, an adult relative who has control of the property may operate a previously licensed child care center under an Emergency Approval to Operate (EAO) (LIC 9117 [4/93]) provided the following conditions are met:
 - (1) The relative, or an adult acting on the relative's behalf, notifies the Department by telephone during the first working day after the licensee's death that the relative intends to operate the child care center.
 - (2) The relative files with the Department within five calendar days of the licensee's death an Application for a Child Day Care Center License (LIC 200A [12/92]) and evidence of the licensee's death as specified in Section 101152e.(4).
 - (A) Notwithstanding the instructions on the LIC 200A (12/92), the Department shall permit the relative to submit only the information on the front side of the LIC 200A (12/92).
 - (3) The relative files his/her fingerprint cards with the Department of Justice within five calendar days of the licensee's death.
- (c) If the adult relative complies with (b)(1) and (b)(2) above, he/she shall not be considered to be operating an unlicensed child care center pending the Department's decision on whether to approve a provisional license.
- (d) The Department shall make a decision within 60 days after the application is submitted on whether to issue a provisional license pursuant to Section 101181.
 - (1) A provisional license shall be granted only if the Department is satisfied that the conditions specified in (b) above and Section 101181 have been met and that the health and safety of the children attending the child care center will not be jeopardized.

NOTE: Authority cited: Sections 1596.81 and 1596.858(e), Health and Safety Code. Reference: Sections 1596.845, 1596.858 and 1596.858(e), Health and Safety Code.

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(A) A fee that represents 50 percent of an established application fee when an existing licensee moves the facility to a new physical address.

(B) A fee that represents 50 percent of the established application fee when a corporate licensee changes who has the authority to select a majority of the board of directors.

(C) A fee of twenty-five dollars (\$25) when an existing licensee seeks to either increase or decrease the licensed capacity of the facility.

(D) An orientation fee of twenty-five dollars (\$25) for attendance by any individual at a department-sponsored family child day care home orientation session, and a fifty dollar (\$50) orientation fee for attendance by any individual at a department-sponsored child day care center orientation session.

(E) A probation monitoring fee equal to the current annual fee, in addition to the current annual fee for that category and capacity for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(F) A late fee that represents an additional 50 percent of the established current annual fee when any licensee fails to pay the current annual licensing fee on or before the due date as indicated by postmark on the payment.

(G) A fee to cover any costs incurred by the department for processing payments including, but not limited to, bounced check charges, charges for credit and debit transactions, and postage due charges.

(H) A plan of correction fee of two hundred dollars (\$200) when any licensee does not implement a plan of correction on or prior to the date specified in the plan.

(2) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home licensed under this act.

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(c) (1) The revenues collected from licensing fees pursuant to this section shall be utilized by the department for the purpose of ensuring the health and safety of all individuals provided care and supervision by licensees, and to support the activities of the licensing program, including, but not limited to, monitoring facilities for compliance with licensing laws and regulations pursuant to this act, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the annual Budget Act in support of the licensing program. The department shall adjust the fees collected pursuant to this section to ensure they do not exceed the costs described in this paragraph.

(2) The department shall not utilize any portion of these revenues sooner than 30 days after notification in writing of the purpose and use, as approved by the Department of Finance, to the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the committee in each house that considers appropriations for each fiscal year. The department shall submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(d) A child day care facility may use a bona fide business or personal check to pay the license fee required under this section.

(e) The failure of an applicant for licensure or a licensee to pay all applicable and accrued fees and civil penalties shall constitute grounds for denial or forfeiture of a license.

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(b) When a licensee moves a child care center from one location to another, the relocation fee shall be as specified in Health and Safety Code Section 1596.803(b)(1)(A).

(1) To qualify for the relocation fee, the following shall apply:

(A) The licensee has notified the Department before actually relocating the child care center.

(B) The child care center licensing category remains the same.

(C) The fee is based on the capacity requested for the new location.

(c) The fees are nonrefundable.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, and 1596.803, Health and Safety Code.