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Title 22@ Social Security

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Division 6@ Licensing of Community Care Facilities

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Chapter 2@ Social Rehabilitation Facilities

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Subchapter 1@ Basic Requirements

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Article 3@ Applications Procedures

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Section 81019@ Criminal Record Clearance

81019 Criminal Record Clearance

(a)

The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code section 1522(b), and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility, based upon the results of such review.

(b)

The following persons are exempt from the requirement to submit fingerprints: (1) A medical professional, as defined by the Department in regulations, who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, 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 or an employee of the facility. (2) 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. (B) The individual is not left alone with clients. (C) When clients 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. (3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker. (A) The exemption shall not apply to a person who is a community care facility licensee or an employee of the facility. (4) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with the permission of, the client. (A) This exemption shall not apply to a person who is a community care facility licensee or an employee of the facility. (5) Members of fraternal, service and similar organizations who conduct group activities for clients, if all of the following apply: (A) Members are not left alone with the clients. (B) Members do not transport clients off the facility premises. (C) The same group does not conduct such activities more often than once a month. (6) The following persons unless contraindicated by the client's individualized program plan (IPP) or Needs and Services Plan: (A) A spouse, significant other, relative, close friend of a client, or the attendant or facilitator who is not employed, retained or contracted by the licensee for a client with a developmental disability, as long as the person is visiting the resident or providing direct care and supervision to that client only. (B) An attendant or facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained or contracted by the licensee. (C) The exemptions in Section 81019(b)(6)(A) or (B) apply only if the person is visiting the client or providing direct care and supervision to the client. (7) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(1)

A medical professional, as defined by the Department in regulations, who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, 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 or an employee of the facility.

(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 or an employee of the facility.

(2)

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. (B) The individual is not left alone with clients. (C) When clients 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.

(A)

The individual is hired for a defined, time-limited job.

(B)

The individual is not left alone with clients.

(C)

When clients 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.

(3)

Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker. (A) The exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(A)

The exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(4)

Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with the permission of, the client. (A) This exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(A)

This exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(5)

Members of fraternal, service and similar organizations who conduct group activities for clients, if all of the following apply: (A) Members are not left alone with the clients. (B) Members do not transport clients off the facility premises. (C) The same group does not conduct such activities more often than once a month.

(A)

Members are not left alone with the clients.

(B)

Members do not transport clients off the facility premises.

(C)

The same group does not conduct such activities more often than once a month.

(6)

The following persons unless contraindicated by the client's individualized program plan (IPP) or Needs and Services Plan: (A) A spouse, significant other, relative, close friend of a client, or the attendant or facilitator who is not employed, retained or contracted by the licensee for a client with a developmental disability, as long as the person is visiting the resident or providing direct care and supervision to that client only. (B) An attendant or facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained or contracted by the licensee. (C) The exemptions in Section 81019(b)(6)(A) or (B) apply only if the person is visiting the client or providing direct care and supervision to the client.

(A)

A spouse, significant other, relative, close friend of a client, or the attendant or facilitator who is not employed, retained or contracted by the licensee for a client with a developmental disability, as long as the person is visiting the resident or providing direct care and supervision to that client only.

(B)

An attendant or facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained or contracted by the licensee.

(C)

The exemptions in Section 81019(b)(6)(A) or (B) apply only if the person is visiting the client

or providing direct care and supervision to the client.

(7)

Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(c)

Prior to the Department issuing a license, the applicant, administrator, and any adult other than a client, residing in the facility shall obtain a California criminal record clearance or exemption as specified in Health and Safety Code section 1522(a)(4).

(d)

All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement -- LIC 508 (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 81019(i), regardless of whether the individual was granted a pardon for the conviction or received an expungement pursuant to Penal Code section 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, 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 to comply with the requirements of Section 81019(e), prior to the individual's employment, residence, or initial presence in the community care facility. (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 Department.

(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 81019(i), regardless of whether the individual was granted a pardon for the conviction or received an expungement pursuant to Penal Code section 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, provide information regarding the conviction.

(A)

Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 81019(i), regardless of whether the individual was granted a pardon for the conviction or received an expungement pursuant to Penal Code section 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, 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 to comply with the requirements of Section 81019(e), prior to the individual's employment, residence, or initial presence in the community care facility. (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 Department.

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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 Department.

(e)

All individuals subject to a criminal record review pursuant to Health and Safety Code section 1522 shall prior to working, residing or volunteering in a licensed facility: (1) Submit a valid mailing address at which the individual shall receive communications from the Department. (A) An individual who holds a criminal record clearance or exemption shall maintain a current and valid mailing address with the Department and shall notify the Department within ten (10) days of any change in mailing address. (2) Obtain a California clearance or a criminal record exemption as required by the Department; or (3) Request a transfer of a criminal record clearance as specified in Section 81019(f); or (4) Request and be approved for a transfer of a criminal record exemption, as specified in Section 81019.1(s), unless, upon request for the transfer, the Department permits the individual to be employed, reside or be present at the facility.

(1)

Submit a valid mailing address at which the individual shall receive communications from the Department. (A) An individual who holds a criminal record clearance or exemption shall maintain a current and valid mailing address with the Department and shall notify the Department within ten (10) days of any change in mailing address.

(A)

An individual who holds a criminal record clearance or exemption shall maintain a current and valid mailing address with the Department and shall notify the Department within ten (10) days of any change in mailing address.

(2)

Obtain a California clearance or a criminal record exemption as required by the

Department; or

(3)

Request a transfer of a criminal record clearance as specified in Section 81019(f); or

(4)

Request and be approved for a transfer of a criminal record exemption, as specified in Section 81019.1(s), unless, upon request for the 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 (4/02). (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., Criminal Record Statement -- LIC 508 (1/03), job description).

(1)

A signed Criminal Background Clearance Transfer Request - LIC 9182 (4/02).

(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.

(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., Criminal Record Statement -- LIC 508 (1/03), job description).

(g)

Violation of Section 81019(e) will result in a citation of a deficiency and an immediate assessment of a civil penalty 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 1548.

(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 1548.

(h)

Violation of Section 81019(e) may result in a denial of the license application or suspension or revocation of the license.

(i)

If the criminal record transcript of any of the individuals specified in Health and

Safety Code section 1522(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 81019.1(a) has not been granted, the Department shall take the following actions: (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 1558, and revoke the license, if the individual continues to provide services at the facility. (4) For convicted individuals residing in the facility, exclude the affected individual pursuant to Health and Safety Code section 1558, and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(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 1558, and revoke the license, if the individual continues to provide services at the facility.

(4)

For convicted individuals residing in the facility, exclude the affected individual pursuant to Health and Safety Code section 1558, and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(j)

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 81066. (1) The documentation shall be available for inspection by the Department.

(1)

The documentation shall be available for inspection by the Department.

(k)

The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual. (1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

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Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

(l)

An individual with arrest history described in Health and Safety Code section 1522(e) shall be notified of the following: (1) The fact of the investigation into conduct associated with arrest information regarding the subject. (2) The specific arrest(s) upon which the investigation is based. (3) The date of the arrest(s). (4) The arresting agency. (5) The disposition of the arrest(s), if available, as indicated on criminal history information received from DOJ. (6) The subject of the notice shall not work or reside in a licensed facility until the subject has received a criminal record clearance or exemption. (7) If the Department obtains evidence

through the investigation that the subject may pose a risk to the health and safety of any person who is or may become a client, the Department may deny a criminal record clearance and/or exclude the subject. (8) The subject of the notice may provide written information the subject believes is relevant to the investigation and/or shows the subject is qualified to work in a licensed facility. (9) The subject of the notice will be notified of the Department's decision regarding whether or not to grant a clearance and of the right to appeal any such decision at that time.

(1)

The fact of the investigation into conduct associated with arrest information regarding the subject.

(2)

The specific arrest(s) upon which the investigation is based.

(3)

The date of the arrest(s).

(4)

The arresting agency.

(5)

The disposition of the arrest(s), if available, as indicated on criminal history information received from DOJ.

(6)

The subject of the notice shall not work or reside in a licensed facility until the subject has received a criminal record clearance or exemption.

(7)

If the Department obtains evidence through the investigation that the subject may pose a risk to the health and safety of any person who is or may become a client, the Department may deny a criminal record clearance and/or exclude the subject.

(8)

The subject of the notice may provide written information the subject believes is relevant to the investigation and/or shows the subject is qualified to work in a licensed facility.

(9)

The subject of the notice will be notified of the Department's decision regarding whether or not to grant a clearance and of the right to appeal any such decision at that time.

(m)

The Department shall, in cases where the subject does not have a conviction, within 5 business days of a decision to deny a criminal record clearance based on an investigation described in subdivision (l), notify the subject of the following: (1) The Department has completed its investigation into arrest information. (2) The Department will not grant that individual a criminal record clearance. (3) The decision, if not appealed, will bar the subject from presence in a licensed facility. (4) The arrest information which triggered the investigation, including the date of arrest, charges, and arresting agency. (5) The Department has determined that the subject may pose a risk to the health and safety of a person who is or may become a client. (6) The specific conduct upon which the decision is based. (7) The subject has a right to contest the decision and will receive an Accusation from the Legal Division as well as information about how to request an administrative hearing.

(1)

The Department has completed its investigation into arrest information.

(2)

The Department will not grant that individual a criminal record clearance.

(3)

The decision, if not appealed, will bar the subject from presence in a licensed facility.

(4)

The arrest information which triggered the investigation, including the date of arrest, charges, and arresting agency.

(5)

The Department has determined that the subject may pose a risk to the health and safety of a person who is or may become a client.

(6)

The specific conduct upon which the decision is based.

(7)

The subject has a right to contest the decision and will receive an Accusation from the Legal Division as well as information about how to request an administrative hearing.

(n)

For initial applications where the subject does not have a conviction, the Accusation described in paragraph (7) of subdivision (n) shall be filed within 40 days of a decision to deny a criminal record clearance.