

## **87819 Criminal Record Clearance**

### **(a)**

The Department shall conduct a criminal record review of all the persons listed in Subsection (b) below 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. (1) Prior to the Department issuing a license, the applicant, administrator and any adults, other than a client residing in the facility shall obtain a California criminal record clearance or exemption. (2) 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: (A) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02). (B) A copy of the individual's: 1. Driver's license, or 2. Valid identification card issued by the Department of Motor Vehicles, or 3. Valid photo identification issued by another state or the United States government if the individual is not a California resident. (C) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description). (3) 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. (A) A person signing the LIC 508 must: 1. Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87819(g) 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. 2. If convicted of a crime other than a minor traffic violation, as specified in Section 87819(g), provide information regarding the conviction. (4) The licensee shall submit the 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 complying with Section 87819(a)(2) prior to the individual's employment, residence, or initial presence in the 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 California Department of Social Services.

**(1)**

Prior to the Department issuing a license, the applicant, administrator and any adults, other than a client residing in the facility shall obtain a California criminal record clearance or exemption.

**(2)**

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: (A) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02). (B) A copy of the individual's: 1. Driver's license, or 2. Valid identification card issued by the Department of Motor Vehicles, or 3. Valid photo identification issued by another state or the United States government if the individual is not a California resident. (C) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

**(A)**

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

**(B)**

A copy of the individual's: 1. Driver's license, or 2. Valid identification card issued by the Department of Motor Vehicles, or 3. Valid photo identification issued by another state or the United States government if the individual is not a California resident.

**1.**

Driver's license, or

**2.**

Valid identification card issued by the Department of Motor Vehicles, or

**3.**

Valid photo identification issued by another state or the United States government if the individual is not a California resident.

**(C)**

Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

**(3)**

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. (A) A person signing the LIC 508 must: 1. Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87819(g) 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. 2. If convicted of a crime other than a minor traffic violation, as specified in Section 87819(g), provide information regarding the conviction.

**(A)**

A person signing the LIC 508 must: 1. Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87819(g) 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. 2. If convicted of a crime other than a minor traffic violation, as specified in Section 87819(g), provide information regarding the conviction.

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Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87819(g) 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.

**2.**

If convicted of a crime other than a minor traffic violation, as specified in Section 87819(g), provide information regarding the conviction.

**(4)**

The licensee shall submit the 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 complying with Section 87819(a)(2) prior to the individual's employment, residence, or initial presence in the 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 California Department of Social Services.

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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 California Department of Social Services.

**(b)**

The following persons and any other adults specified in Health and Safety Code Section 1568.09 shall be required to be fingerprinted and comply with applicable criminal records requirements: (1) The applicant for the license. (A) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity. (2) Adults responsible for administration or direct supervision of staff. (3) Any person, other than a resident, residing in the facility. (4) Any facility personnel who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Health and Safety Code Section 1338.5 or 1736.6, respectively, who is not employed, retained or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who fall under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. Nothing in this paragraph restricts the right of the Department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Health and Safety Code Section 1558. (5) Any staff person or employee who has contact with the residents.

**(1)**

The applicant for the license. (A) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

**(A)**

If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

**(2)**

Adults responsible for administration or direct supervision of staff.

**(3)**

Any person, other than a resident, residing in the facility.

**(4)**

Any facility personnel who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Health and Safety Code Section 1338.5 or 1736.6, respectively, who is not employed, retained or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who fall under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. Nothing in this paragraph restricts the right of the Department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Health and Safety Code Section 1558.

**(5)**

Any staff person or employee who has contact with the residents.

**(c)**

The following individual's are exempt from the requirements applicable under Section 87819(b). (1) A medical professional, as defined in Section 87801(m)(1), 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 governing 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 repair person 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 an individual 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 permission of, the client. (A) The exemption shall not apply to an individual 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) A volunteer 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 is never left alone with clients. (C) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene. (7) The following individuals unless contraindicated by the client's needs and service plan:

(A) A spouse, relative, significant other, or close friend of a client. (B) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee. (C) The exemptions in Sections 87819(d)(7)(A) or (B) apply only if the individual is visiting the client or providing direct care and supervision to that client only. (8) 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 in Section 87801(m)(1), 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 governing 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 governing 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 repair person 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 repair person 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 an individual who is a community care facility licensee or an employee of the facility.

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The exemption shall not apply to an individual 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 permission of, the client. (A) The exemption shall not apply to an individual who

is a community care facility licensee or an employee of the facility.

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The exemption shall not apply to an individual 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)**

A volunteer 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 is never left alone with clients. (C) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.

**(A)**

The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

**(B)**

The volunteer is never left alone with clients.

**(C)**

The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.

**(7)**

The following individuals unless contraindicated by the client's needs and service plan:

(A) A spouse, relative, significant other, or close friend of a client. (B) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee. (C) The exemptions in Sections 87819(d)(7)(A) or (B) apply only if the individual is visiting the client or providing direct care and supervision to that client only.

**(A)**

A spouse, relative, significant other, or close friend of a client.

**(B)**

An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee.

**(C)**

The exemptions in Sections 87819(d)(7)(A) or (B) apply only if the individual is visiting the client or providing direct care and supervision to that client only.

**(8)**

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.

**(d)**

All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1568.09 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 87819(a)(2) or (4) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87819.1(r), unless, upon request for a 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.

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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 87819(a)(2) or

**(4)**

Request and be approved for a transfer of a criminal record exemption, as specified in Section 87819.1(r), unless, upon request for a transfer, the Department permits the

individual to be employed, reside or be present at the facility.

**(e)**

Violation of Section 87819(d) will result in a citation of a deficiency and 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 1568.0822.

**(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 1568.0822.

**(f)**

Violation of Section 87819(d) may result in a denial of the license application or suspension and/or revocation of the license.

**(g)**

If the criminal record transcript of any individuals specified in the Health and Safety Code Section 1568.09 discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for a crime other than a minor traffic violation, for which the fine was less than \$300, and an exemption pursuant to Section 87219.1(a) has not been granted, the Department shall take the following actions:

(1) For initial applicant, 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 1568.092 and deny the application or revoke the license if the individual continues to provide services and/or reside at the facility. (4) For individuals residing in the facility, including spouses of the applicant, licensee, or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1568.092 and denial of the application or revocation of the license if the individual continues to provide services and/or reside in the facility.

**(1)**

For initial applicant, 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 1568.092 and deny the application or revoke the license if the individual continues to provide services and/or reside at the facility.

**(4)**

For individuals residing in the facility, including spouses of the applicant, licensee, or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1568.092 and denial of the application or revocation of the license if the individual continues to provide services and/or reside in the facility.

**(h)**

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 87866.

**(i)**

The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility. (1) Documentation shall be available for inspection by the Department.

**(1)**

Documentation shall be available for inspection by the Department.

**(j)**

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.

**(k)**

An individual with arrest history described in Health and Safety Code section 1568.09(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, if available, as indicated on criminal history information received from DOJ. (6) That 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, if available, as indicated on criminal history information received from DOJ.

**(6)**

That 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.

**(I)**

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 (k) notify the subject of the following: (1) The Department has completed its investigation into arrest information. (2) The Department will not grant the individual a criminal record clearance. (3) The decision, if not appealed, will bar the subject from presence in a licensed facility. (4) The arrests 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 the individual a criminal record clearance.

**(3)**

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

**(4)**

The arrests 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.

**(m)**

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