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Title 22@ Social Security

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Division 6@ Licensing of Community Care Facilities

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Chapter 9.5@ Foster Family Homes

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Article 2@ Administrative

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Section 89219.1@ Criminal Record Exemption

89219.1 Criminal Record Exemption

(a)

After a review of the criminal record transcript, the Department may grant an exception from disqualification for a license, employment or presence in a home pursuant to Section 89219, subsection (g) if: (1) The applicant/caregiver requests an exemption in writing for himself or herself, or (2) The applicant/caregiver requests an exemption in writing for a person associated with the home, or (3) The applicant/caregiver does not seek an exemption for the affected person, the affected person may request an individual exemption in writing, if the conditions set forth in Health and Safety Code section 1522, subsection (c)(5) are met; and (4) The affected person 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, presence, or residence in a licensed home.

(1)

The applicant/caregiver requests an exemption in writing for himself or herself, or

(2)

The applicant/caregiver requests an exemption in writing for a person associated with the home, or

(3)

The applicant/caregiver does not seek an exemption for the affected person, the

affected person may request an individual exemption in writing, if the conditions set forth in Health and Safety Code section 1522, subsection (c)(5) are met; and

(4)

The affected person 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, presence, or residence in a licensed home.

(b)

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. (2) Period of time since the crime was committed and number of offenses. (3) Circumstances surrounding the commission of the crime that would demonstrate that repetition is not likely. (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior. (5) Granting by the Governor of a full and unconditional pardon. (6) Character references. (7) A certificate of rehabilitation from a superior court. (8) Evidence of honesty and truthfulness as revealed in exemption application documents and interviews. (A) Documents include, but are not limited to: 1. A Criminal Record Statement (LIC 508D, Criminal Record Statement); and 2. The person's written statement/explanation of the conviction and the circumstances surrounding the arrest. (9) Evidence of honesty and truthfulness as revealed in the exemption application interviews and conversations between the person or others and the Department.

(1)

The nature of the crime.

(2)

Period of time since the crime was committed and number of offenses.

(3)

Circumstances surrounding the commission of the crime that would demonstrate that repetition is not likely.

(4)

Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(5)

Granting by the Governor of a full and unconditional pardon.

(6)

Character references.

(7)

A certificate of rehabilitation from a superior court.

(8)

Evidence of honesty and truthfulness as revealed in exemption application documents and interviews. (A) Documents include, but are not limited to: 1. A Criminal Record Statement (LIC 508D, Criminal Record Statement); and 2. The person's written statement/explanation of the conviction and the circumstances surrounding the arrest.

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A Criminal Record Statement (LIC 508D, Criminal Record Statement); and

2.

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the arrest.

(9)

Evidence of honesty and truthfulness as revealed in the exemption application interviews and conversations between the person or others and the Department.

(c)

No exemption shall be granted for a crime that is listed in Health and Safety Code section 1522, subsection (g).

(d)

The Department may deny an exemption request if: (1) The caregiver and/or the affected person fails to provide documents requested by the Department, or (2) The caregiver and/or the affected person fails to cooperate with the Department in the exemption process.

(1)

The caregiver and/or the affected person fails to provide documents requested by the Department, or

(2)

The caregiver and/or the affected person fails to cooperate with the Department in the exemption process.

(e)

The reasons for any exemption granted or denied shall be in writing and kept by the Department.

(f)

The Department may grant a criminal record exemption that places conditions on the person's continued licensure, and employment or presence in a licensed home.

(g)

A person shall be permitted to transfer a current criminal record exemption from one state-licensed facility to another provided the exemption has been processed through a state licensing regional office and the following are met: (1) A signed Criminal Record Exemption Transfer Request (LIC 9188). (2) The request is in writing to the Department and includes: (A) A copy of the person's valid identification, such as: 1. California driver's license; or 2. California identification card issued by the Department of Motor Vehicles; or 3. Photo identification issued by another state or the United States government if the person is not a California resident. (B) Any other documentation required by the Department (i.e., LIC 508D, Criminal Record Statement and job description).

(1)

A signed Criminal Record Exemption Transfer Request (LIC 9188).

(2)

The request is in writing to the Department and includes: (A) A copy of the person's valid identification, such as: 1. California driver's license; or 2. California identification card issued by the Department of Motor Vehicles; or 3. Photo identification issued by another state or the United States government if the person is not a California resident. (B) Any other documentation required by the Department (i.e., LIC 508D, Criminal Record Statement and job description).

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California driver's license; or

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California identification card issued by the Department of Motor Vehicles; or

3.

Photo identification issued by another state or the United States government if the person is not a California resident.

(B)

Any other documentation required by the Department (i.e., LIC 508D, Criminal Record Statement and job description).

(h)

If the Department denies the person's request to transfer a conditional criminal record exemption, the Department shall provide the individual with a right to an administrative hearing to contest the Department's decision.

(i)

The Department shall take the following actions if a criminal record exemption is not or cannot be granted: (1) For initial applicants, denial of the application. (2) For current caregivers, the Department may institute an administrative action, including, but not limited to, revocation of the license. (3) For current or prospective employees, exclusion of the affected person pursuant to Health and Safety Code section 1558, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the home. (4) For persons residing in the home, caregiver or employee, exclusion of the affected individual pursuant to Health and Safety Code section 1558, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside at the home.

(1)

For initial applicants, denial of the application.

(2)

For current caregivers, the Department may institute an administrative action, including, but not limited to, revocation of the license.

(3)

For current or prospective employees, exclusion of the affected person pursuant to Health and Safety Code section 1558, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the home.

(4)

For persons residing in the home, caregiver or employee, exclusion of the affected individual pursuant to Health and Safety Code section 1558, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside at the home.

(j)

To request a criminal record exemption, an applicant/caregiver must submit information that indicates that the affected individual meets the requirements of Section 89219.1(a)(4). The Department will notify the applicant/caregiver 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) calendar days of the date of the Department's notice. (A) Affected 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, certified

court documents to process the exemption request, pursuant to Section 89219.1(b). (B) If the affected individual for whom the criminal record exemption is requested is a resident other than a spouse or dependent family member and the caregiver/applicant does not submit the information listed in the Department's written notice within 45 calendar days of the date of the notice, the Department may cease processing the exemption request and close the case. (C) If the affected individual for whom the criminal record exemption is requested is an applicant, caregiver, spouse or dependent family member and the caregiver/applicant does not submit the information listed in the Department's written notice within 45 calendar days of the date of the notice, the Department may deny the exemption request. (D) Affected individuals may request a criminal record exemption on their own behalf if the caregiver/applicant: 1. Chooses not to request the exemption and 2. Removes the affected individual who resides in the home after receiving notice of the affected individual's criminal history.

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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.

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The notice will list the information that must be submitted to request a criminal record exemption.

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Affected 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, certified court documents to process the exemption request, pursuant to Section 89219.1(b).

(B)

If the affected individual for whom the criminal record exemption is requested is a resident other than a spouse or dependent family member and the caregiver/applicant does not submit the information listed in the Department's written notice within 45 calendar days of the date of the notice, the Department may cease processing the exemption request and close the case.

(C)

If the affected individual for whom the criminal record exemption is requested is an applicant,

caregiver, spouse or dependent family member and the caregiver/applicant does not submit the information listed in the Department's written notice within 45 calendar days of the date of the notice, the Department may deny the exemption request.

(D)

Affected individuals may request a criminal record exemption on their own behalf if the caregiver/applicant: 1. Chooses not to request the exemption and 2. Removes the affected individual who resides in the home after receiving notice of the affected individual's criminal history.

1.

Chooses not to request the exemption and

2.

Removes the affected individual who resides in the home after receiving notice of the affected individual's criminal history.

(k)

The Department shall grant a simplified criminal record exemption if the affected individual has the criminal history profile outlined below: (1) The individual does not have a misdemeanor conviction within the last five years; (2) The individual does not have a felony conviction within the last seven years; (3) This individual has not been convicted of a crime described in Health and Safety Code section 1522(g)(2)(A) or (g)(2)(B). (4) The individual's criminal history does not indicate a risk or threat to the health and safety, protection, or well-being of a child or nonminor dependent.

(1)

The individual does not have a misdemeanor conviction within the last five years;

(2)

The individual does not have a felony conviction within the last seven years;

(3)

This individual has not been convicted of a crime described in Health and Safety Code section 1522(g)(2)(A) or (g)(2)(B).

(4)

The individual's criminal history does not indicate a risk or threat to the health and safety, protection, or well-being of a child or nonminor dependent.

(I)

At the Department's discretion, an individual who is otherwise eligible for a simplified criminal record exemption may be required to go through the standard exemption process if the Department determines such action is necessary to help protect the health and safety of a child or nonminor dependent.