

101170 Criminal Record Clearance

(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.

(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. (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.

(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.

(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.

(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.

(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. (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.

(A)

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

(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.

(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.

(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.

(A)

The exemption shall not apply to an individual who is employed, retained or contracted by the licensee.

(c)

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

(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. (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)

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.

(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. (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.

(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) 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 101170(f) or (4) 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.

(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 101170(f) or

(4)

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 the 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).

(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 the 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).

(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 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 1596.99.

(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.

(1)

Documentation shall be available for inspection by the Department.

(k)

If the criminal record transcript of any individuals specified in the 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. (4) For convicted individuals residing in the facility, licensee or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1596.8897, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside at the facility.

(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.

(4)

For convicted individuals residing in the facility, licensee or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1596.8897, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside at the facility.

(I)

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.

(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.

(m)

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.

(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.

(n)

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.

(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.

(o)

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.

(p)

Nothing in this action shall be interpreted to supercede the Department's authority under Sections 1596.886 and 1596.8897 of the Health and Safety Code.

(q)

Prior to issuing a clearance to any individual with arrest history described in Health and Safety Code section 1596.871(e), the Department 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 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 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 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 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 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 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.

(r)

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 (q) 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 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 that 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.

(s)

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