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Title 22@ Social Security

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Division 12@ Child Care Facility Licensing Regulations

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Chapter 3@ Family Day Care Homes for Children

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Article 3@ Application Procedure

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Section 102370.1@ Criminal Record Exemptions

102370.1 Criminal Record Exemptions

(a)

The Department will notify a licensee to act immediately to remove from the facility or bar from entering the facility any person described in Sections 102370.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice. (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor; (2) Any person who has been convicted of a felony; (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1596.871(c)(2); (4) Any person who has been convicted of any crime specified below: (A) Battery (B) Shooting at Inhabited Dwelling (C) Corporal Injury on Spouse/Cohabitant (D) Discharging Firearm with Gross Negligence (E) Exhibiting Weapon/Firearm (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death (G) Criminal Threat to Harm or Injure Another Person (H) Cruelty to Animals (I) Willful Harm or Injury to Child; or (5) Any other person ordered to be removed by the Department. (6) The Department may assess a civil penalty of \$50 per day for failure to comply with Section 102370.1(a).

(1)

Any person who has been convicted of, or is awaiting trial for, a sex offense against a

minor;

(2)

Any person who has been convicted of a felony;

(3)

Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1596.871(c)(2);

(4)

Any person who has been convicted of any crime specified below: (A) Battery (B) Shooting at Inhabited Dwelling (C) Corporal Injury on Spouse/Cohabitant (D) Discharging Firearm with Gross Negligence (E) Exhibiting Weapon/Firearm (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death (G) Criminal Threat to Harm or Injure Another Person (H) Cruelty to Animals (I) Willful Harm or Injury to Child; or

(A)

Battery

(B)

Shooting at Inhabited Dwelling

(C)

Corporal Injury on Spouse/Cohabitant

(D)

Discharging Firearm with Gross Negligence

(E)

Exhibiting Weapon/Firearm

(F)

Threat to Commit a Crime Resulting in Gross Bodily Injury or Death

(G)

Criminal Threat to Harm or Injure Another Person

(H)

Cruelty to Animals

(I)

Willful Harm or Injury to Child; or

(5)

Any other person ordered to be removed by the Department.

(6)

The Department may assess a civil penalty of \$50 per day for failure to comply with Section 102370.1(a).

(b)

In addition to the requirements of Section 102370.1(a), the licensee must: (1) Return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.(A) Confirmation must be made on either a Removal Confirmation -- Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation -- Denial, LIC 300B (Rev. 9/03), Removal Confirmation -- Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation -- Nonexemptible, LIC 300D (Rev. 9/03). (B) The Department may assess a civil penalty of \$50 per day for failure to comply with Section 102370.1(b). (2) Provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B Rev. 05/03) to one parent or authorized representative of every child currently in care within one day of receipt of the addendum from the Department.

(A) Upon notice from the Department that the individual may return to the facility, provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 05/03) to one parent or authorized

representative of every child in care within one day of receipt of the notice and addendum from the Department. (3) Obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in 102370.1(b)(2) and (2)(A). (4) Maintain copies of the signed and dated receipt required in Section 102370.1(b)(3) in each child's file. Copies shall be made available to the Department upon request.

(1)

Return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility. (A) Confirmation must be made on either a Removal Confirmation -- Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation -- Denial, LIC 300B (Rev. 9/03), Removal Confirmation -- Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation -- Nonexemptible, LIC 300D (Rev. 9/03). (B) The Department may assess a civil penalty of \$50 per day for failure to comply with Section 102370.1(b).

(A)

Confirmation must be made on either a Removal Confirmation -- Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation -- Denial, LIC 300B (Rev. 9/03), Removal Confirmation -- Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation -- Nonexemptible, LIC 300D (Rev. 9/03).

(B)

The Department may assess a civil penalty of \$50 per day for failure to comply with Section 102370.1(b).

(2)

Provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B Rev. 05/03) to one parent or authorized representative of

every child currently in care within one day of receipt of the addendum from the Department. (A) Upon notice from the Department that the individual may return to the facility, provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 05/03) to one parent or authorized representative of every child in care within one day of receipt of the notice and addendum from the Department.

(A)

Upon notice from the Department that the individual may return to the facility, provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 05/03) to one parent or authorized representative of every child in care within one day of receipt of the notice and addendum from the Department.

(3)

Obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in 102370.1(b)(2) and (2)(A).

(4)

Maintain copies of the signed and dated receipt required in Section 102370.1(b)(3) in each child's file. Copies shall be made available to the Department upon request.

(c)

If it is found that the applicant or any other person residing at or regularly in the home during the hours of care, has ever been convicted of a crime other than a minor traffic infraction as specified in Section 102370.1(b), the application for licensure shall be denied or the license shall be revoked, unless the following apply: (1) Such person has been granted a full and unconditional pardon for the offense, by the governor. (2) After a review of the criminal record transcript, the Department may grant an exemption from Section 102370(d) if: (A) The

applicant/licensee requests an exemption for himself or herself, or (B) The applicant/licensee requests an exemption in writing for a individual associated with the facility, or (C) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, and the affected individual requests an individual exemption in writing, and (D) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility. (3) The Department shall consider factors, including, but not limited to, the following, as evidence of good character and rehabilitation: (A) The nature of the offense committed including, but not limited to, whether it involved violence or a threat of violence to others. (B) Time elapsed since the offense was committed, and the number of offenses. (C) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition. (D) Activities since conviction, such as employment, education, or participation in therapy, that would indicate rehabilitation. (E) Character references. 1. All character references shall be on a Reference Request form (LIC 301E -- Exemptions [Rev. 7/03]). (F) A Certificate of Rehabilitation from a Superior Court. (G) Evidence of honesty and truthfulness as revealed in exemption application documents. 1. Documents include, but are not limited to: a. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and b. The individual's written statement/explanation of the conviction and the circumstances about the arrest. (H) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department. (4) The Department shall also consider the following factors in evaluating a request for an exemption: (A) Facility and type of association. (B) The individual's age at the time the crime

was committed.

(1)

Such person has been granted a full and unconditional pardon for the offense, by the governor.

(2)

After a review of the criminal record transcript, the Department may grant an exemption from Section 102370(d) if: (A) The applicant/licensee requests an exemption for himself or herself, or (B) The applicant/licensee requests an exemption in writing for a individual associated with the facility, or (C) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, and the affected individual requests an individual exemption in writing, and (D) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.

(A)

The applicant/licensee requests an exemption for himself or herself, or

(B)

The applicant/licensee requests an exemption in writing for a individual associated with the facility, or

(C)

The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, and the affected individual requests an individual exemption in writing, and

(D)

The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.

(3)

The Department shall consider factors, including, but not limited to, the following, as evidence of good character and rehabilitation: (A) The nature of the offense committed including, but not limited to, whether it involved violence or a threat of violence to others. (B) Time elapsed since the offense was committed, and the number of offenses. (C) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition. (D) Activities since conviction, such as employment, education, or participation in therapy, that would indicate rehabilitation. (E) Character references.1. All character references shall be on a Reference Request form (LIC 301E -- Exemptions [Rev. 7/03]). (F) A Certificate of Rehabilitation from a Superior Court. (G) Evidence of honesty and truthfulness as revealed in exemption application documents. 1. Documents include, but are not limited to: a. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and b. The individual's written statement/explanation of the conviction and the circumstances about the arrest. (H) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.

(A)

The nature of the offense committed including, but not limited to, whether it involved violence or a threat of violence to others.

(B)

Time elapsed since the offense was committed, and the number of offenses.

(C)

Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.

(D)

Activities since conviction, such as employment, education, or participation in therapy, that

would indicate rehabilitation.

(E)

Character references.1. All character references shall be on a Reference Request form (LIC 301E -- Exemptions [Rev. 7/03]).

1.

All character references shall be on a Reference Request form (LIC 301E -- Exemptions [Rev. 7/03]).

(F)

A Certificate of Rehabilitation from a Superior Court.

(G)

Evidence of honesty and truthfulness as revealed in exemption application documents. 1.

Documents include, but are not limited to: a. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and b. The individual's written statement/explanation of the conviction and the circumstances about the arrest.

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a.

A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and

b.

The individual's written statement/explanation of the conviction and the circumstances about the arrest.

(H)

Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.

(4)

The Department shall also consider the following factors in evaluating a request for an

exemption: (A) Facility and type of association. (B) The individual's age at the time the crime was committed.

(A)

Facility and type of association.

(B)

The individual's age at the time the crime was committed.

(d)

To request a criminal record exemption, licensee or license applicants must submit information that indicates that the individual meets the requirements of Section 102370.1(c)(2)(D). The Department will notify the licensee or license applicant and the affected individual, in concurrent, separate notices, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption. (1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in an exemption request. (2) The notice will list the information that must be submitted to request a criminal record exemption. (3) The information must be submitted within forty-five (45) calendar days of the date of the Department's notice. (A) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing the information required by Section 102370.1(c)(2)(D) and any information requested by the Department, including, but not limited to, certified court documents to process the exemption request, pursuant to Section 102370.1(c)(3). (B) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 calendar days of the date of the notice, the

Department may cease processing the exemption request and close the case. (C) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 calendar days of the date of the notice, the Department may deny the exemption request. (D) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant: 1. Chooses not to request the exemption and 2. Chooses not to employ or terminates the individual's employment after receiving notice of the individual's criminal history, or 3. Removes the individual who resides in the facility after receiving notice of the individual's criminal history.

(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) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing the information required by Section 102370.1(c)(2)(D) and any information requested by the Department, including, but not limited to, certified court documents to process the exemption request, pursuant to Section 102370.1(c)(3). (B) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or

dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 calendar days of the date of the notice, the Department may cease processing the exemption request and close the case. (C) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 calendar days of the date of the notice, the Department may deny the exemption request. (D) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant: 1. Chooses not to request the exemption and 2. Chooses not to employ or terminates the individual's employment after receiving notice of the individual's criminal history, or 3. Removes the individual who resides in the facility after receiving notice of the individual's criminal history.

(A)

Individuals who submit a criminal record exemption request shall cooperate with the Department by providing the information required by Section 102370.1(c)(2)(D) and any information requested by the Department, including, but not limited to, certified court documents to process the exemption request, pursuant to Section 102370.1(c)(3).

(B)

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

(C)

If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not

submit the information listed in the Department's written notice within 45 calendar days of the date of the notice, the Department may deny the exemption request.

(D)

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

1.

Chooses not to request the exemption and

2.

Chooses not to employ or terminates the individual's employment after receiving notice of the individual's criminal history, or

3.

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

(e)

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

(1)

The licensee and/or the affected individual fails to provide documents requested by the Department or

(2)

The licensee and/or the affected individual fails to cooperate with the Department in

the exemption process.

(f)

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

(g)

The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.

(h)

It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual: (1) Makes a knowingly false or misleading statement regarding: (A) Material relevant to their application for a criminal record clearance or exemption, (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or (2) Is on probation or parole. (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 102370.1(h)(2).

(1)

Makes a knowingly false or misleading statement regarding: (A) Material relevant to their application for a criminal record clearance or exemption, (B) His or her criminal record clearance or exemption status to obtain employment or permission to be

present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or

(A)

Material relevant to their application for a criminal record clearance or exemption,

(B)

His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or

(C)

His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or

(2)

Is on probation or parole. (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 102370.1(h)(2).

(A)

If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 102370.1(h)(2).

(i)

The Department shall consider granting a criminal record exemption for an individual when the individual's criminal record history meets all of the applicable

criteria specified in Sections 102370.1(i)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good behavior as specified in Section 102370.1(c)(2)(D). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.

(1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation. (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest. (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest. (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest. (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest. (6) The individual has not been convicted of a violent felony. (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 102370.1(i)(1) through (5) above shall begin from the last date of conviction(s).

(1)

The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.

(2)

The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(3)

The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(4)

The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(5)

The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(6)

The individual has not been convicted of a violent felony.

(7)

If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 102370.1(i)(1) through (5) above shall begin from the last date of conviction(s).

(j)

It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet

the requirements specified in Sections 102370.1(i)(1) through (6).

(k)

The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1596.871(f) of the Health and Safety Code.

(l)

The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 102370.1 (l)(1) through (4) below: (1) The individual does not have a demonstrated pattern of criminal activity; (2) The individual has one or more convictions arising from a single incident of criminal conduct; (3) Each conviction is a misdemeanor and is for a crime that is nonviolent and does not pose a risk of harm to an individual; and (4) It has been at least five consecutive years since the date of conviction.

(1)

The individual does not have a demonstrated pattern of criminal activity;

(2)

The individual has one or more convictions arising from a single incident of criminal conduct;

(3)

Each conviction is a misdemeanor and is for a crime that is nonviolent and does not pose a risk of harm to an individual; and

(4)

It has been at least five consecutive years since the date of conviction.

(m)

At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health

and safety of clients.

(n)

If the Department denies or cannot grant a criminal record exemption the Department will: (1) For initial applicants, deny the application. (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license. (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility. (4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility. (5) Exemption denial notices shall specify the reason the exemption was denied.

(1)

For initial applicants, deny the application.

(2)

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

(3)

For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(4)

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

(5)

Exemption denial notices shall specify the reason the exemption was denied.

(o)

If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 102370.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life. (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition. (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted. (3) If an individual who has previously been denied an exemption reapplies after the relevant time period described in Section 102370.1(o)(1) above, the Department may, in accordance with the provisions in Section 102370.1 et seq., grant or deny the subsequent

request for an exemption. (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 102370.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

(1)

If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.

(2)

An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.

(3)

If an individual who has previously been denied an exemption reapplies after the relevant time period described in Section 102370.1(o)(1) above, the Department may, in accordance with the provisions in Section 102370.1 et seq., grant or deny the subsequent request for an exemption.

(4)

If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 102370.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

(p)

A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department: (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 9/03). (2) A copy of the individual's:(A) Driver's license,

or (B) Valid identification card issued by the Department of Motor Vehicles, or (C) Valid photo identification issued by another state or the United States Government if the individual is not a California resident. (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

(1)

A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 9/03).

(2)

A copy of the individual's: (A) Driver's license, or (B) Valid identification card issued by the Department of Motor Vehicles, or (C) Valid photo identification issued by another state or the United States Government if the individual is not a California resident.

(A)

Driver's license, or

(B)

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

(C)

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

(3)

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

(q)

The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another: (1) The basis on which the Department granted the exemption; (2) The nature and frequency of client contact in the new position; (3)

The category of facility where the individual wishes to transfer; (4) The type of clients in the facility where the individual wishes to transfer; (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or (6) Whether the exemption meets current exemption laws or regulations.

(1)

The basis on which the Department granted the exemption;

(2)

The nature and frequency of client contact in the new position;

(3)

The category of facility where the individual wishes to transfer;

(4)

The type of clients in the facility where the individual wishes to transfer;

(5)

Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or

(6)

Whether the exemption meets current exemption laws or regulations.

(r)

If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

(s)

A criminal record exemption may be transferred between state and county

licensing agencies or between county licensing agencies provided: (1) The transfer is to the same facility type. (2) The individual and the licensing agency that processed the exemption submit a Substitute Agency Notification Request (BCII 9002) to the receiving licensing agency. (3) The receiving licensing agency submits the Substitute Agency Notification Request (BCII 9002) to the Department of Justice. (4) The Department of Justice approves the request and returns a completed BCII 9002 to the receiving agency. (5) The licensing agency approves the exemption transfer after considering the following: (A) The basis on which the licensing agency granted the exemption; (B) Whether the exemption was appropriately evaluated and granted.

(1)

The transfer is to the same facility type.

(2)

The individual and the licensing agency that processed the exemption submit a Substitute Agency Notification Request (BCII 9002) to the receiving licensing agency.

(3)

The receiving licensing agency submits the Substitute Agency Notification Request (BCII 9002) to the Department of Justice.

(4)

The Department of Justice approves the request and returns a completed BCII 9002 to the receiving agency.

(5)

The licensing agency approves the exemption transfer after considering the following: (A) The basis on which the licensing agency granted the exemption; (B) Whether the exemption was appropriately evaluated and granted.

(A)

The basis on which the licensing agency granted the exemption;

(B)

Whether the exemption was appropriately evaluated and granted.

(t)

At the Department's discretion, an exemption may be rescinded if it is determined that: (1) The exemption was granted in error or (2) The exemption does not meet current exemption laws or regulations or (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

(1)

The exemption was granted in error or

(2)

The exemption does not meet current exemption laws or regulations or

(3)

The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

(u)

The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following: (1) Violations of licensing laws or regulations; (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client; (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or (4) The individual is convicted of a subsequent crime.

(1)

Violations of licensing laws or regulations;

(2)

Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;

(3)

Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or

(4)

The individual is convicted of a subsequent crime.

(v)

If the Department rescinds an exemption the Department shall: (1) Notify the licensee and the affected individual in writing; and (2) Initiate an administrative action.

(1)

Notify the licensee and the affected individual in writing; and

(2)

Initiate an administrative action.

(w)

If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may initiate an administrative action to protect the health and safety of clients.