

102370 Criminal Record Clearance

(a)

Prior to the Department issuing a license, the applicant(s) and all adults residing in the home shall obtain a California criminal record clearance or exemption.

(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 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. (4) 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. (5) A medical professional, as defined in Section 102352(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. (6) 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. (7) An attendant or facilitator for a child with a developmental disability who is visiting the client 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 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.

(4)

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.

(5)

A medical professional, as defined in Section 102352(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.

(6)

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)

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(7)

An attendant or facilitator for a child with a developmental disability who is visiting the client 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.

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(c)

All individuals subject to a 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 102370(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. (B) If convicted of a crime other than a minor traffic violation as specified in Section 102370(g), 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 102370(j) prior to the individual's employment, residence, or initial presence in the child care home. (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. (B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.

1. If the Department determines that the licensee or applicant has violated Section 102370(c)(2)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed.
2. The licensee shall then submit the fingerprints to the California Department of Justice for processing.

(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 102370(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. (B) If convicted of a crime other than a minor traffic violation as specified in Section 102370(g), provide information regarding the conviction.

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(B)

If convicted of a crime other than a minor traffic violation as specified in Section 102370(g), 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 102370(j) prior to the individual's employment, residence, or initial presence in the child care home. (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. (B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility. 1. If the Department determines that the licensee or applicant has violated Section 102370(c)(2)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed. 2. The licensee shall then submit the fingerprints to the California Department of Justice for processing.

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If the Department determines that the licensee or applicant has violated Section 102370(c)(2)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed.

2.

The licensee shall then submit the fingerprints to the California Department of Justice for processing.

(d)

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 be able to 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 102370(j) or (4) Request and be approved for a transfer of a criminal record exemption, as specified in Section 102370.1(p), 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 be able to 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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(3)

Request a transfer of a criminal record clearance as specified in Section 102370(j) or

(4)

Request and be approved for a transfer of a criminal record exemption, as specified in Section 102370.1(p), 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 102370(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 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.

(f)

Violation of Section 102370(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 1596.871(b) 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 102370.1(a) has not been granted, 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 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 in 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 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 in the facility.

(h)

If the conviction was for another crime, except a minor traffic violation, the Department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(i)

A licensee or applicant for a license may request a transfer of a criminal records 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: (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 Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).

(2)

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

(A)

Driver's license, or

(B)

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

(C)

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

(3)

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

(j)

A criminal record clearance 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 clearance 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.

(1)

The transfer is to the same facility type.

(2)

The individual and the licensing agency that processed the clearance 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.

(k)

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

(1)

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(l)

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.

(n)

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 as it deems necessary: (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. (3) If the individual arrested is the licensee's spouse or a dependent adult that resides in the licensee's home, the Department may notify the licensee, by telephone or in writing, to immediately cease operation for up to 30 days.

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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.

(3)

If the individual arrested is the licensee's spouse or a dependent adult that resides in the licensee's home, the Department may notify the licensee, by telephone or in writing, to immediately cease operation for up to 30 days.

(o)

After the Department notifies the licensee, pursuant to Section 102370(n)(1) or (n)(3), or the individual pursuant to Section 102370(n)(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.

(p)

Should the Department determine at any time during the 30 days referred to in Sections 102370(n)(1), (n)(2), and (n)(3) 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.

(q)

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

(r)

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) 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)

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.

(s)

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 (r) 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 denial, 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 denial, 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.

(t)

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