



EARLY CARE & EDUCATION LAW UNIT

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COMPLAINTS AGAINST YOUR CHILD CARE FACILITY

During the operation of your child care business, complaint(s) may be made to Community Care Licensing (“Licensing”) about your program. This handout is intended to provide basic information on Licensing’s investigation of complaints, how Licensing decides whether to issue a citation against your facility, and how you can appeal a citation that you do not agree with.

COMPLAINTS

Under California law, anyone may file a complaint with Licensing against a child care provider. A complaint is an allegation that a licensing regulation or law is being violated. Generally if the complaint does not involve allegations of physical abuse, sexual abuse, felony offenses, or unlicensed facility operations, the substance of the complaint will be disclosed to the provider.ⁱ However, the identity of the person who made the complaint against the provider is kept confidential.ⁱⁱ

When Licensing receives a complaint with a reasonable basis, Licensing conducts a preliminary review and onsite investigation of the complaint **within 10 calendar days** after a complaint is made, except when the visit would adversely affect an investigation by Licensing or some other governmental agency.ⁱⁱⁱ

If Licensing determines that the complaint is without reasonable basis, then the complaint must be marked confidential and must not be disclosed to the public.^{iv}

INVESTIGATION OF COMPLAINTS

Licensing has the inspection authority specified in Health and Safety Code Sections 1596.852, 1596.853 and 1596.8535. A Licensing officer, employee, or agent may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, to prevent a violation of, this act and the regulations adopted by Licensing pursuant to this act.^v

Licensing must conduct any authorized inspection, announced site visit, or unannounced site visit of any child care facility only during the period beginning one hour before and ending one hour after the facility's normal business hours or at any time child care services are being provided. This does not apply to the investigation of any complaint received by Licensing if Licensing determines that an inspection or site visit outside the time period beginning one hour before, and ending one hour after, the facility's normal operating hours is necessary to protect the health or safety of any child in the facility.^{vi}

Licensing's rights during a site-visit to your facility:

- Licensing can inspect any part of the facility in which child care services are provided and any portion of the home to which children have access^{vii};
- Licensing may review and copy documents in your child care files, the staff files, and the children's files during normal business hours^{viii};
- Licensing may interview children or staff privately to determine compliance with regulations or to prevent violations^{ix};
- Licensing has the authority to observe the physical condition of children, including conditions that could indicate abuse, neglect or inappropriate placement.^x

Provider's rights during a site-visit^{xi}:

- The right to require Licensing staff to identify themselves;
- The right to be advised of the type of visit being conducted, whether annual site visit, complaint, plan of correction (POC), pre-licensing, or some other type;
- The right to be treated as a professional, with dignity and respect;
- The right to receive an accurate report of the evaluator's findings listing each observed deficiency. Each deficiency shall be separately numbered, so as to clearly indicate the number of deficiencies, shall be accompanied by a number which corresponds to a section of law or licensing regulation, and shall include a description of the evaluator's observation which led to the finding of a deficiency. The description of the evaluator's observation shall include a clear explanation of why the existing condition constitutes a deficiency, unless the description of the observation provided such an explanation.
- The right to review Licensing laws, regulations and policies;
- The right to an impartial investigation of all complaints;
- The right, at the time of the visit, to determine and develop a plan of correction for deficiencies cited;
- The right to use licensing reports as a means to agree or disagree with cited deficiencies;

- The right to an exit interview upon completion of the visit and to receive a signed copy of the licensing report;
- The right to be informed on the licensing report of the evaluator's supervisor and his/her telephone number; and
- The right to access the public file on any facility and to purchase a copy of the file at reasonable cost.

INVESTIGATION FINDINGS

After the conclusion of an investigation, the Licensing analyst completes a Complaint Investigation Report on Form 9099. The report includes an identification of who conducted the investigation, the purpose of the visit, who was contacted at the facility, the complaint allegation, and a summary of the investigation findings. The report must end with a resolution for the complaint allegation. The report will categorize the results of the investigation in one of the following ways:

- **Substantiated:** Licensing has determined that the complaint allegation is valid because the preponderance of evidence standard has been met;
- **Unsubstantiated:** Although the allegation may have happened or is valid, Licensing has determined that there is not enough proof that the complaint allegation occurred (there is not a preponderance of evidence to prove that the alleged violation occurred);
- **Unfounded:** Licensing found the complaint allegation to be false, that it could not have happened, and/or is without a reasonable basis.

All substantiated and unsubstantiated reports become part of a child care provider's file, which can be reviewed by the public. Unfounded reports are kept in the provider's confidential file.

If Licensing substantiates a complaint allegation against a child care facility, they must issue the facility a citation and/or a civil penalty. The deficiencies, noncompliance with licensing law or regulations, will be cited by regulation number and a Plan of Correction ("POC") date will be established on the Form 9099.

There are three types of deficiencies:

Type A: violations of the regulations and the Health and Safety Code, that if not corrected, have a direct and immediate risk to the health, safety, or personal rights of clients in care.

Type B: violations of the regulations and the Health and Safety Code that, without correction, could become a risk to the health, safety or personal rights of clients, or a recordkeeping violation that would impact the care of clients and/or protection of their resources, or a violation that would impact those services required to meet clients' needs.

Type C: violations of the regulations that do not present an immediate (Type A) or potential (Type B) negative impact to the health, safety or personal rights of clients in care and where the licensee is in substantial compliance in degree, frequency and intent.

The licensee has a right to provide comments on the Form 9099 regarding the complaint and any

disagreement with the application of Licensing regulations, notice of deficiencies, the required POC due date, or any other findings related to the visit. Also, the licensee may submit a letter to respond to the Form 9099 and these documents become a matter of public record. When a licensee signs Form 9099 it does not imply agreement with the findings, but is the licensee's acknowledgement that he or she has received the licensing report.^{xii}

Further, a licensee must send, by certified mail, to parents/guardians of all children in their care, copies of reports substantiating complaints related to physical or sexual abuse of children in the licensee's care (reports must be sent within three days of receiving the citation), or for any case in which a facility has received three, or more, substantiated complaints relating to the same violation (i.e. same regulation section) during the past 12 months, the report must be sent within five days of receiving the third citation.^{xiii} The licensee must retain certified mail receipts for one year as written proof that the reports were sent, and failure to comply with the above requirements is subject to civil penalties.^{xiv} Please note that appealing a citation does not affect a licensee's obligations to send the reports, but the licensee may provide subsequent notice to parents/guardians of children in their care if the appeal is favorable.^{xv}

CIVIL PENALTY INCREASE

Effective July 1, 2015, there has been an increase in the amount of civil penalties that may be imposed for a violation that Licensing determines resulted in death, or serious injury/physical abuse, of a child at a care facility. Here's a chart showing the civil penalty amounts depending on the facility type and capacity:

Family Type	Capacity (of all of licensee's facilities)	Civil Penalty for Death	Civil Penalty for Serious Injury/Physical Abuse
Child Care Center (CCC)	Less than or equal to 30	\$7,500	\$2,500
	31-100	\$10,000	\$5,000
	More than 100	\$15,000	\$10,000
Small Family Child Care (FCCH)	All sizes	\$5,000	\$1,000
Large Family Child Care (FCCH)	All sizes	\$7,500	\$2,000

Serious Injury is defined by Health and Safety Code Section 1596.8865(d) and Physical Abuse is defined by Health and Safety Code 1596.99 (e)(2) & 1597.58 (e)(2).

"Serious Injury" for CCC and FCCH is defined in HSC §1596.8865(d): "As used in this section, 'serious injury' means a serious impairment of physical condition, including, but not limited to, the following:

loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement."

"Physical Abuse" for CCC and FCCH is defined in HSC §1596.99(e)(2) & 1597.58(e)(2): "...'physical abuse' includes physical injury inflicted upon a child by another person by other than accidental means or sexual abuse as defined in Penal Code Section 11165.1 or neglect as defined in Penal Code Section 11165.2 or unlawful corporal punishment or injury as defined in Penal Code Section 11165.4 when the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency."

APPEALING A CITATION

If you disagree with a citation or disagree with a civil penalty charge, you can file an appeal with Licensing.

Initial Appeal Rights^{xvi}

- The right, without prejudice, to appeal any decision, any failure to act according to law or regulation, or any failure to act within any specified timeline, through the licensing agency;
- The right to request a meeting with the Regional Manager to discuss any licensing issue and with notice to bring any person to the meeting;
- The right to due process and the option of bringing a representative to any administrative action;
- The right to file a formal complaint, and receive a written response to that complaint within 30 days, for any licensing issue not covered by the appeal rights listed above, including, but not limited to, inappropriate behavior of department employees.

Appeal Process^{xvii}

Effective January 1, 2016, there are two appeal procedures for licensees, specific to the type of civil penalty or deficiency assessed. Each procedure has two levels of formal appeal. You must start at the first level. This is to encourage review of your appeal as quickly as possible and to ensure that the decisions of licensing staff are reviewed by the appropriate supervisor. Any appeal made to the next level should include a clear explanation of what factor you feel was not adequately considered by the previous reviewer.

Make sure that you include the following information in your appeal letter: the current date, your facility name and number, and the purpose of your letter (e.g., you are appealing citation(s) issued to you on [include date of citation] for [state reason for citation]). Also, be sure to attach any evidence or documentation that supports your appeal to the appeal letter (e.g., letters from parents regarding the quality of your child care; any documents Licensing is alleging you did not have; etc.).

Levels of appeal are as follows:

Civil Penalty for Death, Serious Bodily Injury/Serious Injury or Physical Abuse:

1. Deputy Director, Community Care Licensing Division
2. Administrative Law Judge

Any other Civil Penalty or Deficiency:

1. Regional Manager
2. Program Administrator

- If a licensee disagrees with a penalty or deficiency, they may file an appeal in writing with the Deputy Director (for death, serious bodily injury/serious injury or physical abuse) or Regional Office of jurisdiction over the facility (any other civil penalty or deficiency) **within 15 business days** from the date the report or penalty assessment notice was received. All available supporting documentation must be submitted with the request for review.
- Within 30 business days of the request for review, the licensee may submit additional supporting documentation that was unavailable at the time of the initial request.
- Within 30 business days of receiving the initial request from the licensee, the licensing agency may request additional information from the licensee deemed necessary to make its determination.
- Within 30 business days of receiving the licensing agency's request for additional information, the licensee shall provide this additional information.
- The agency has a duty to review the facts presented without prejudice. Upon review of the facts upon which the appeal is based, the agency may amend any portion of the action taken, or may dismiss the violation. The licensee shall be notified in writing of the licensing agency's decision within 60 business days of the date when all necessary information has been provided to the licensee by the department.
- Upon exhausting this review, the licensee may further appeal the decision. For violations resulting in death, serious bodily injury/serious injury or physical abuse, further appeal may be made to an Administrative Law Judge using procedures outlined in the California Government Code. For all other civil penalties or deficiencies, further appeal may be made to the Program Administrator within 15 business days of receipt of notice of the Regional Manager's decision. The licensee shall be notified in writing of the Program Administrator's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee. The Program Administrator's decision is then considered final, and concludes the licensee's administrative appeal rights.
- Civil penalties will be due and payable when administrative appeals have been exhausted.

In order to get the Regional Manager, Program Administrator, and Deputy Director's contact information, please call the Licensing office that issued you the citation. A list of Licensing offices can be found here: <http://www.cclid.ca.gov/res/pdf/CCListingMaster.pdf>

Also, Licensing Form 9058, which describes applicant/licensee rights generally, can be found here: <http://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9058.pdf>.

Licensee/Applicant Complaints

Each licensee/applicant has the right, without prejudice, to bring to the department's attention either of the following^{xviii}:

- Any alleged misapplication or capricious enforcement by any departmental representative of the regulations in this chapter; or
- Any differences of opinion between the licensee/applicant and any departmental representative concerning the proper application of the regulations in this chapter.

Additional Resources

You can find more information on complaints and appeals by visiting the following:

1. Licensing Evaluator Manual on Complaints, which can be found at: <http://ccld.ca.gov/res/pdf/Complaints.pdf>
2. California Code of Regulations, Title 22, which can be found at: [https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I95BBB650D4C011DE8879F88E8B0DAAAE&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I95BBB650D4C011DE8879F88E8B0DAAAE&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))
3. Licensing Form 9058 and Form 421:
<http://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9058.pdf>
<http://www.cdss.ca.gov/Portals/9/FMUForms/I-L/LIC421CC.pdf?ver=2017-08-18-160547-427>

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- ⁱ Community Care Licensing Evaluator Manual on Complaints, Section 3-2305 at: <http://cclcd.ca.gov/res/pdf/Complaints.pdf> ; California Health and Safety Code §1596.853(b)
- ⁱⁱ Community Care Licensing Evaluator Manual on Complaints, Section 3-2011 at: <http://cclcd.ca.gov/res/pdf/Complaints.pdf> ; California Health and Safety Code §1596.853(b)
- ⁱⁱⁱ California Health and Safety Code §1596.853(c); Community Care Licensing Evaluator Manual on Complaints, Section 3-2120 at: <http://cclcd.ca.gov/res/pdf/Complaints.pdf>
- ^{iv} California Health and Safety Code §1596.853(c)
- ^v California Health and Safety Code §1596.852
- ^{vi} California Health and Safety Code §1596.8535
- ^{vii} California Code of Regulations, Title 22, §102391(c)
- ^{viii} California Code of Regulations, Title 22, §101200(c) and §102391(d)
- ^{ix} California Code of Regulations, Title 22, §101200(b) and §102391(b)
- ^x California Code of Regulations, Title 22, § 101200(d)
- ^{xi} Licensing Form 9058, <http://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9058.pdf>
- ^{xii} Community Care Licensing Evaluator Manual on Complaints; Section 3-2305 at: <http://cclcd.ca.gov/res/pdf/Complaints.pdf>
- ^{xiii} California Health & Safety Code §1538.5(b)(1) and (2)
- ^{xiv} California Health & Safety Code §1538.5(c) and (d)
- ^{xv} Community Care Licensing Evaluator Manual on Complaints, Section 3-2330 at: <http://cclcd.ca.gov/res/pdf/Complaints.pdf>
- ^{xvi} Licensing Form 9058, <http://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9058.pdf>
- ^{xvii} California Health & Safety Code §1596.99(k) and §1597.58(k); Licensing Form 9058 and Form 421, <http://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC9058.pdf> and <http://www.cdss.ca.gov/Portals/9/FMUForms/I-L/LIC421CC.pdf?ver=2017-08-18-160547-427>
- ^{xviii} California Code of Regulations, Title 22, §101207(a) and §102403