

Article 6. Background Check**87355 CRIMINAL RECORD CLEARANCE****87355**

- (a) The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code section 1569.17 and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility, based upon the results of such review.
- (b) Prior to the Department issuing a license, the applicant, administrator and any adults other than a client, residing in the facility shall have a criminal record clearance or exemption.

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Section 1569.17(a) of the Health and Safety Code provides in part:

Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5 subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information.

- (A) If the California Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).
- (B) If the California Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the California Department of Social Services shall cease processing the application until the conclusion of the trial.
- (C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the California Department of Social Services with a statement of that fact.

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- (D) If the California Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).
- (E) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a).

Section 1569.17(b) of the Health and Safety Code provides in part:

In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.
- (C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.
- (D) Any staff person or employee who has contact with the clients.

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- (E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.
- (F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

The following individuals are exempt from requirements applicable under paragraph (1):

- (A) A medical professional, as defined in Section 87101(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all of the following apply:
 - (i) 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.
 - (ii) The individual is providing time-limited specialized clinical care or services.
 - (iii) The individual is providing care or services within the individual's scope of practice.
 - (iv) The individual is not a community care facility licensee or an employee of the facility.
- (B) A third-party repair person, or similar retained contractor, if all of the following apply:
 - (i) The individual is hired for a defined, time-limited job.
 - (ii) The individual is not left alone with clients.
 - (iii) When clients are present in the room in which the repair person or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

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- (C) A third-party contractor or other business professional, if all of the following apply:
- (i) The individual is retained by a client.
 - (ii) The individual is at the facility at the request or by permission of that client.
 - (iii) The individual is not left alone with other clients.
- (D) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker.
- (i) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.
- (E) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with the permission of, the client.
- (i) This exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.
- (F) Members of fraternal, service and similar organizations who conduct group activities for clients, if all of the following apply:
- (i) Members are not left alone with the clients.
 - (ii) Members do not transport clients off the facility premises.
 - (iii) The same group does not conduct such activities more often than once a month.
- (G) A volunteer, if all of the following apply:
- (i) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

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- (ii) The volunteer is never left alone with clients.
- (iii) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.
- (iv) The volunteer is at the facility during normal waking hours.
- (v) The volunteer spends no more than 16 hours per week at the facility.
- (H) The following individuals unless contraindicated by the client's needs and service plan:
 - (i) A spouse, significant other, relative, or close friend of a client.
 - (ii) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee.
 - (iii) The exemptions in Section 87355(b)(3)(H)(i) or (ii) apply only if the individual is visiting the client or providing direct care and supervision to that client only.
- (I) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

Section 1569.17(e) of the Health and Safety Code provides in part:

The California Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

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Section 1569.17(a)(5) of the Health and Safety Code states in part:

An applicant and any person specified in subdivision (b) of the Health and Safety Code Section 1569 shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and individuals listed in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person described in subdivision (b) has a criminal record, the license may be revoked pursuant to Health and Safety Code Section 1569.50. The department may also suspend the license pending an administrative hearing pursuant to Health and Safety Code Sections 1569.50 and 1569.51.

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- (c) 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 Trust Line 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).

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Section 1569.17(g) of the Health and Safety Code states:

The California Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

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- (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 87355(h) 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 87355(h), provide information regarding the conviction.
- (2) If the signed statement indicates a conviction for any crime other than a minor traffic violation for which the fine was \$300 or less, the licensee shall immediately notify the Department and the Department shall take appropriate action as specified in Section 87355(h). The Department shall take the same actions as would be taken in Health and Safety Code section 1569.17(c) if a criminal record transcript had been received.
- (3) The license 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 87355(c), prior to the individual's employment, residence, or initial presence in the 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.
- (e) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1569.17(b) shall prior to working, residing or volunteering in a licensed facility:
- (1) Obtain a California clearance or a criminal record exemption as required by the Department or

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- (2) Request a transfer of a criminal record clearance as specified in Section 87355(c) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87356(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (f) Violation of Section 87355(e) shall result in 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 (\$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 1569.49.
- (g) Violation of Section 87355(e) may result in a denial of the license application or suspension and/or revocation of the license.
- (h) If the criminal record transcript of any of the individuals specified in Health and Safety Code section 1569.17(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 87356(a) has not been granted, the Department shall take the actions specified in Health and Safety Code section 1569.17(c).
- (1) For an initial applicant, the Department may 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 1569.58 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, including spouses of the applicant, licensee, or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1569.58 and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the facility.

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Health and Safety Code section 1569.17(c)(3) provides in part:

"...If the State Department of Social Services determines, on the basis of the fingerprint images submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4 [sexual battery], 273a, 273d [child abuse], 273g, [lewd conduct in the presence of a child], or 368 [elder or adult dependent abuse] of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f)...."

Health and Safety Code section 1569.17(c)(3) provides in part:

"If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly, or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department...."

Health and Safety Code section 1569.17(h) provides:

"If a licensee or facility is required by law to deny employment or to terminate employment of any employee based written notification from the department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or the facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination."

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- (i) The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record clearance.

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- (j) 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 87412, Personnel Records.
- (k) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility.
 - (1) Documentation shall be available at the facility for inspection by the Department.
- (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.

NOTE: Authority cited: Section 1569.30 and 1569.49(d), Health and Safety Code. Reference: Section 1569.17 and 1569.49, Health and Safety Code.

87356 CRIMINAL RECORD EXEMPTION**87356**

- (a) The Department shall notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87356(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 Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1569.17(c)(3);
 - (4) Any person who has been convicted of any crime specified below:
 - (A) Battery
 - (B) Shooting at Inhabited Dwelling