
EVALUATOR MANUAL TRANSMITTAL SHEET

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| <u>Distribution:</u> <input type="checkbox"/> All Child Care Evaluator Manual Holders <input type="checkbox"/> All Residential Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Evaluator Manual Holders | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"><u>Transmittal No.</u></td> </tr> <tr> <td style="padding: 2px;">11 RM -03</td> </tr> <tr> <td style="padding: 2px;"><u>Date Issued</u></td> </tr> <tr> <td style="padding: 2px;">August 2011</td> </tr> </table> | <u>Transmittal No.</u> | 11 RM -03 | <u>Date Issued</u> | August 2011 |
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| 11 RM -03 | | | | | |
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| August 2011 | | | | | |

Subject:

Reference Material – Complaints: Planning the Investigation 3-2200

Reason for Change:

Clarification regarding eviction procedures in Residential Care Facilities for the Elderly.

Filing Instructions:

REMOVE – pages 9.1, 10, 11, 12, 13 and 14

INSERT –pages 9.1, 10, 11, 12, 13 and 14

Approved:

ORIGINAL DOCUMENT SIGNED BY
Thomas Stahl, Chief

August 30, 2011

THOMAS STAHL Chief
 Policy Development Bureau
 Community Care Licensing Division

Date

3-2115 MULTIPLE COMPLAINT REPORTS OF THE SAME INCIDENT 3-2115

From time to time a Licensing Program Analyst may encounter multiple complainants reporting the same allegation. Whenever it appears that multiple complainants may be reporting the same allegation, the Licensing Program Analyst must analyze the reports to determine whether they are duplicates. Complaints are duplicates only if they are identical allegation(s). Identical means the same answers to the questions of who, what, where, why, when and how. This is important to ensure that all complaint allegations are investigated while at the same time utilizing resources efficiently.

Once it is determined that a complaint allegation is duplicated the assigned Licensing Program Analyst shall merge all information received from the latter complaint(s) with the original complaint on the Complaint Report (LIC 802).

1. The duplicate complainants and their contact info shall be added to the detail section (Page 2 of the original Complaint Report (LIC 802)). All complainants shall be contacted for the pre and the post investigation follow up.
2. If a subsequent complainant reported an additional allegation(s) that wasn't already reported, then a separate complaint (LIC 802) shall be completed for the additional allegation(s).

Remember, as with all complaints, if requested, the complainant's confidential status is to be protected. This includes not revealing the complainant's identity to the other complainant even though they are both listed on the same Complaint Report (LIC 802).

3-2120 ESTABLISHING CONTROLS**3-2120**

An on-site facility visit must be made within ten **calendar** days after receipt of a complaint, except when the complaint involves any death of a child or questionable death of an adult or elderly client. A site visit must be made within **two business days** after receiving a complaint of a questionable death (death resulting from injury, abuse, or other than natural causes) of an adult or elderly client or any death of a child.

Calendar days are counted in the following way:

1. The day the complaint is received is not counted.
2. The date on which the visit is due is counted as the 10th day, unless that day is a Saturday, Sunday, or official holiday.

If the due date falls on a Saturday, Sunday, or official holiday, then the mandatory site visit must be accomplished on the following workday if not before.

Business days are counted in the following way:

1. The day the **death** complaint is received is not counted.
2. The date on which the visit is due is counted as the second business day.

Saturday, Sunday, Holidays and Official Holidays are not counted as a business day.

3-2120 ESTABLISHING CONTROLS (Continued)

3-2120

Example:

| Calendar Days | | Business Days | |
|----------------------|---------------------------|----------------------|---|
| Thursday | Complaint received | Thursday | Death Complaint Received |
| Friday | Day 1 | Friday | Day 1 – First Business Day |
| Saturday | Day 2 | Saturday | |
| Sunday | Day 3 | Sunday | |
| Monday | Day 4 | Monday | Day 2 – Second Business Day- Visit Due |
| Tuesday | Day 5 | Tuesday | |
| Wednesday | Day 6 | Wednesday | |
| Thursday | Day 7 | Thursday | Death Complaint Received |
| Friday | Day 8 | Friday | Day 1 – First Business Day |
| Saturday | Day 9 | Saturday | |
| Sunday | Holiday | Sunday | Holiday |
| Monday | Official Holiday | Monday | Official Holiday |
| Tuesday | Day 10 - Visit Due | Tuesday | Day 2 – Second Business Day- Visit Due |

After accepting complaint information the analyst must follow the Regional Office procedures which ensure that the complaint is logged on the Complaint Control Log (LIC 957), receives a control number, a due date, and quickly routed to the appropriate analyst. This process is normally done by support staff as outlined in Section 700 of the Regional Office Procedures Manual.

At this point, the complaint becomes a workload assignment. The analyst should immediately record the control log information into his/her Field Control Book. This practice prevents the assignment from being forgotten and assures that the mandatory investigative timetables will be monitored.

3-2200 PLANNING THE INVESTIGATION

3-2200

Because complaint investigations involve more “leg work” than routine facility evaluations, it is important to plan an investigative approach to ensure comprehensive data gathering in the event the investigation results in an administrative action.

Upon receiving the complaint assignment, identify the extent of the problem and the laws and regulations that may have been violated. A Licensing Program Manager should be immediately informed of all allegations that, if true, would endanger the health and/or safety of any clients or children in care. Allegations of abuse and other immediate health and safety threats are always first priority. Prior to conducting the complaint investigation, the Licensing Program Analyst must contact the complainant, if one is indicated on the LIC 802, and obtain clarification and/or additional information regarding the allegation(s). Record this additional information on the back of the LIC 802 in the section marked “Pre-Investigation Contact with Complainant.”

By law (Welfare & Institutions Code 9721), complaints referred by the Office of the State Long-Term Care Ombudsman are given priority. Additionally, in 1982, Assembly Bill 2997 (Chapter 1457) (Welfare & Institutions Code 9725) was passed stating that the identification of a resident “shall remain confidential unless disclosure is authorized by the patient or resident or his or her conservator or legal representative.”

3-2200 PLANNING THE INVESTIGATION (Continued)

3-2200

Thus, if the Ombudsman is referring a complaint on behalf of a client and refuses to relinquish any client identifying information, the analyst shall still accept the submitted information as a complaint and proceed with the investigation. If the investigation is difficult to pursue because of insufficient client-related information, the Ombudsman should be re-contacted. The difficulty should be explained and all possible information collected from the Ombudsman. The investigation shall commence on the basis of available information, as with complaints from other sources.

Complaints related to unlawful evictions must be given priority consideration. Residents who have been issued an eviction notice face the potential of being relocated from the facility. These complaint investigations must be initiated in a timely manner to ensure that the eviction notice and process is compliant with existing statute and regulations. (See the Evaluation Manual's Regulation Interpretations and Procedures section 87224 on eviction procedures in residential care facilities for the elderly.)

Prior to making a complaint site visit, the analyst must review the file, and according to Regional Office procedures, discuss the serious cases with a Licensing Program Manager. During the file review, the number and kind of substantiated complaint violations should be noted. This information may be needed later to determine if the licensee (Community Care Facilities only) will have to be notified to send copies of the LIC 9099s to the clients' authorized representatives should this complaint be substantiated (Refer to Evaluator Manual's Reference Material section 3-2330, Special Documentation Requirements for Community Care Facilities). Any records which are not confidential and which may be helpful can be photocopied for reference during the site visit.

If there is a complaint about a Certified Family Home, consider contacting other Regional Offices that have Certified Family Homes associated with the same Foster Family Agency. The purpose of this contact is to determine whether there is the same type of problem with many Certified Family Homes of the same Foster Family Agency. If this appears to be true, Analysts should investigate whether there may be a systemic problem within that Foster Family Agency.

Analysts are mandated by law to report suspected abuse. (Refer to the Evaluator Manual's Reference Material Complaints sections 3-2600 through 3-2630 for investigating abuse, the Evaluator Manual's Reference Material Reporting Requirements section 4-0000 for reporting procedures, and California Code of Regulations, title 22, sections 80044 and 80045 for Community Care Facilities; section 82044 for Adult Day Programs; sections 87755 and 87756 for Residential Care Facilities for the Elderly; 87844 and 87845 for Residential Care Facilities for the Chronically Ill; sections 89244 and 89245 for Foster Family Homes; sections 101200 and 101201 for Child Care Centers; and the Evaluator Manual's Reference Material Complaints section 3-2300 for details on preparing for the visit.)

3-2210 PRIORITIZING AND EVALUATING THE COMPLAINT

3-2210

Analysts are responsible for making their Licensing Program Managers aware of all complaints, especially those concerning the health and safety of children and clients. The Licensing Program Manager and analyst may jointly decide it is necessary for the analyst to make an immediate visit.

3-2210 PRIORITIZING AND EVALUATING THE COMPLAINT
(Continued)**3-2210**

In offices serving remote areas, it may be expedient for the Licensing Program Manager to call an analyst in the field to respond to the complaint because he/she may be in the general location of the facility.

The following are examples of complaint situations seriously endangering the health and safety of clients or children:

1. Fire hazards
2. Misuse of medication
3. Priority I or II Allegations

Sometimes complaints are filed with the licensing agency in order to harass a licensee. Suspected harassment, i.e., repeated complaints which have over time never been substantiated, should be thoroughly documented detailing considerations of the complainant's motivation, the number of times the complainant has filed allegations against the facility, how recently the last inspection was made, history of the facility, and the probability that the violation exists.

It is essential for an analyst to exercise caution when dealing with complaints which involve neighborhood disputes. Even though the complaint may be filed as the result of unrelated disputes or hard feelings, the basis for the complaint may be factual. It is the determination of this factual basis that is the concern of the Department. In most cases, at least one site visit will be necessary to assess the situation. During the visit, complaint details and observations must be carefully recorded.

Regardless of whether harassment is determined, the Complaint Report (LIC 802) should be completed. Elements of the complaint should be listed on the front, the rationale for suspected harassment on the reverse side. The LIC 802 then follows the normal control procedures and is sent to the Licensing Program Manager for review. If the Licensing Program Manager is in agreement that the complaint is harassment and without substance, he/she would sign off; thus, a site visit would not be required.

3-2230 COMPLAINT CONSULTANTS**3-2230**

Some complaint investigations may require technical knowledge and expertise beyond the capabilities and/or duties of licensing staff. Assistance with these cases is available to State licensing offices from consultants under contract with the Department and from other State or local agencies. Most often these services are useful during a joint visit to the facility.

The consultants under contract specialize in medicine, nursing, nutrition, pharmacology, psychiatry and psychology. These services can be requested through a Licensing Program Manager.

Other agencies whose technical assistance may be very valuable and may have a mutual interest in the facility include:

1. Local fire departments
2. State/local health departments

3-2230 COMPLAINT CONSULTANTS (Continued)**3-2230**

3. Client advocate groups
4. Placement agencies
5. Protective service agencies
6. Law enforcement agencies
7. Resource and referral agencies

3-2240 USE OF LAW ENFORCEMENT BACK-UP**3-2240**

In cases where there may be physical danger to the analyst, (i.e., investigation of unlicensed operations in high crime areas or situations where drug dealing is part of the allegation) the analyst and Licensing Program Manager may determine that local law enforcement back up is necessary. This should be arranged prior to the visit and noted on the LIC 802.

3-2300 CONDUCTING THE SITE VISIT**3-2300**

The purpose of Evaluator Manual sections 3-2305 through 3-2400 is to provide basic guidelines to the analyst for resolving complaints that do not involve allegations of physical or sexual abuse. Upon receipt of these complaints, the licensing agency must respond within ten calendar days.

3-2305 ENTRANCE INTERVIEW**3-2305**

Complaint visits are made without prior notice to the licensee; in other words, they are “unannounced”. Before entering the facility, the analyst must identify him/herself to the licensee, or person in charge. Once inside the facility, the analyst should explain the purpose of the visit and the basic elements of the complaint. In all cases except those involving Priority I or II allegations, the analyst shall apply the standard practice of divulging the substance of the complaint during the ten-day on-site visit. Refer to Evaluator Manual sections 3-2325, Complaints Involving Facilities That Are Not Owner-Occupied, 3-2605, Assisting Other Investigatory Agencies, and 3-2610, Investigating Allegations of Abuse, for details on exceptions to this rule.

If there is a complaint about a Certified Family Home, the analyst may involve the Foster Family Agency before the ten-day on-site complaint visit to the Certified Family Home. However, the substance of the complaint must not be revealed before the Certified Family Home complaint visit as required by Health and Safety Code Section 1538(b).

The analyst must review the Foster Family Agency’s Certified Family Home record before or after visiting the Certified Family Home.

During the entrance interview at the facility site/Certified Family Home, the analyst should explain:

1. The law requires that all complaints be investigated.
2. The complaint is an allegation, not an accusation, of wrongdoing.

3-2305 ENTRANCE INTERVIEW (Continued)**3-2305**

Following this, the analyst should briefly outline what he/she intends to do while in the facility/Certified Family Home, how the licensee/authorized representative/Certified Family Home parent can assist and that, before leaving, the findings will be discussed with the licensee.

The licensee/designated representative should also be told that if deficiencies are found, they will be described on the Licensing Report and that there will be an opportunity to develop a written Plan of Correction on the report during the exit interview. The Foster Family Agency staff will handle the written Plan of Correction for the Certified Family Home parent.

The licensee/authorized representative should be further advised that he/she may use space on the Licensing Report to document his/her point of view and that signing the report does not imply agreement with the findings but is acknowledging receipt of the licensing report.

3-2310 REVIEW OF THE FACILITY**3-2310**

When visiting the facility or Certified Family Home in response to complaint allegations, the primary focus is to thoroughly investigate all elements of the complaint. Investigating an allegation of inadequate food served at mealtime, for example, should involve checking the quantity and quality of perishable and staple foods, the menus, the diets, and dieticians' reports where appropriate. Additionally, the analyst should try to schedule the visit prior to and during meal times and appropriately note this information on the Complaint Investigation Report (LIC 9099). The report should also include the analyst's observation of the preparation, handling and serving of meals; interviews with clients, children, and kitchen staff; check of the food in storage; and inspection for contamination.

In some cases, the complaint may be easily solved and there may be time for other evaluations that may be due, such as post-licensing, annual, etc. However, if secondary evaluations are conducted, the findings must be documented on the LIC 809 separate from the findings of the complaint investigation (LIC 9099). Refer to Evaluator Manual section 3-3105 of the Documentation Section.

In other cases, the allegations may be such that a comprehensive evaluation is required during the visit in order to resolve the complaint. If additional complaint related deficiencies are found during this comprehensive evaluation, those deficiencies may be documented on the same LIC 9099 if space permits.

However, if during the comprehensive evaluation there are unrelated deficiencies found, both a LIC 809 and a LIC 9099 must be completed. For example, the analyst receives a complaint alleging inadequate supervision. While at the facility investigating the complaint, the Licensing Program Analyst finds a broken window with sharp jagged edges. Because the broken window is not directly related to the complaint allegation, the analyst must report the findings of the broken window separately on a LIC 809. At the top of the LIC 809, under type of visit, the "MANAGEMENT" box should be checked, as this finding has nothing to do with the original complaint received. The complaint findings would be documented on a LIC 9099.