
EVALUATOR MANUAL TRANSMITTAL SHEET

<p><u>Distribution:</u></p> <p><input type="checkbox"/> All Child Care Evaluator Manual Holders</p> <p><input checked="" type="checkbox"/> All Residential Care Evaluator Manual Holders</p> <p><input type="checkbox"/> All Evaluator Manual Holders</p>	<p style="text-align: center;"><u>Transmittal No.</u></p> <p style="text-align: center;">15GLR-01</p> <hr/> <p style="text-align: center;"><u>Date Issued</u></p> <p style="text-align: center;">November 2015</p>
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Subject:

GENERAL LICENSING REQUIREMENTS
 Regulation Interpretations and Procedures
 Section 80006 – Operation Without a License

Reason for Change:

Revisions to Section 80006 – Operation Without a License

Filing Instructions:

REMOVE: pages 6 through 8

INSERT: pages 6 through 8

Approved:

Signed by Lilit Tovmasian

11/18/2015

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 Policy Development Bureau
 Community Care Licensing Division

 Date

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ARTICLE 2 LICENSE**80006 OPERATION WITHOUT A LICENSE****80006****(a) PROCEDURE**

For further clarification, refer to the following policy and procedure for subsection (b) and (c).

(a) POLICY

When an unlicensed facility is in operation, the facility may file an application. However, continued operation pending licensure is a violation of the law.

(b) POLICY

If information is received regarding the operation of an unlicensed facility, it shall be treated and given priority as a complaint. (Refer to Evaluator Manual Reference Material Sections 1-0600 through 1-0650 and 3-2010 through 3-3000.)

A site visit shall be conducted to determine if the facility needs to be licensed.

The Licensing Program Analyst should contact his/her Licensing Program Manager if (1) reasonable attempts have been made to gain access, and (2) there is a basis to support the belief that care and supervision are being provided (e.g., interviews with neighbors support belief). If the evaluator cannot gain entry into the facility in order to conduct this site visit, contact the Regional Investigation Section.

In order to determine if a license is necessary, the review tool may be used during the site visit to assess what the operator has agreed to provide in the living arrangement. There may be instances where sufficient evidence exists to substantiate an unlicensed operation complaint against the operator without the use of this review tool or with partial completion of the review tool. Information used to determine the scores used in the review tool can come from several sources including, but not limited to:

1. Observations and interviews with individuals residing at the location;
2. Interviews with the operator;
3. Information received from other sources such as hospice agency, home health agency, discharge planner, placement agency, social worker or the local ombudsman office.

The Regional Office consulting enforcement attorney should be assisting every step of the way with these fact intensive decisions, and in all situations, the Regional Manager and/or Licensing Program Manager must be consulted before making a decision.

Upon final review of the data collected, if it is determined that care and supervision is provided and meets administrative or evidentiary standard, the issuance of a citation for 'unlicensed operation' followed by issuance of a Notice of Operation in Violation of Law will occur.

80006 OPERATION WITHOUT A LICENSE (Continued)**80006****PROCEDURE**

If care and supervision are not being provided and it does not appear that any is needed, notify the operator (by use of the LIC 9099) and the complainant(s), if applicable (by use of the Complainant Response-LIC 856) by phone or in person. A copy of the LIC 856 notice shall be placed in the facility confidential files.

If care and supervision are not being provided, yet it appears that individual(s) need such, notify the same individuals specified above plus any known responsible parties, including relatives, guardians or placement agencies, as applicable.

When notifying responsible persons or agencies, mail notices no later than one working day after the site visit has been conducted.

If there are any immediate health and safety risks (e.g., abuse, neglect, or exploitation, serious physical plant deficiencies, etc.) telephone the appropriate county Child Protective Services Unit and/or the Long-Term Care Ombudsman so that immediate action to investigate and take necessary protective action, including necessary relocation of clients, can be initiated. Follow up such notification in writing. See Sections 1-0000 and 1-1190.

Discuss with your supervisor the need to refer any cases to the Program Investigation Section.

(c)

POLICY

In-home supportive services arrangements often appear to fall under the jurisdiction of the Community Care Licensing Division, particularly congregate living arrangements for the elderly and/or persons with disabilities wherein the provider – who sometimes lives in the home – provides in-home supportive services entailing care and supervision. Not all congregate living arrangements require licensure, however. If all residents receiving care and supervision in a living arrangement receive care through the In-Home Supportive Services Program either through the same or different providers, licensure is not required. All other living arrangements where care and supervision is provided will need to be assessed on a case-by-case basis. This includes living arrangements where some residents receive care and supervision through the In Home Supportive Services Program and some residents receive care and supervision through another provider relationship.

The Notice of Operation in Violation of Law (LIC 195) shall be issued when a facility is discovered operating without a license.

The LIC 195 shall be issued omitting the last paragraph, when a facility is discovered operating under the following circumstances:

1. When an application has been filed, but a license has not yet been approved.
2. When an initial application for a new license has been denied (regardless of whether or not such denial is appealed by the applicant).

When the **Regional** Office has been previously informed that a facility is operating without a license, take LIC 195 signed by the **Regional** Manager, to the site visit. If it is

80006 OPERATION WITHOUT A LICENSE (Continued)**80006****(c) POLICY (Continued)**

determined during the visit that the facility is providing care and supervision and is, in fact, operating unlicensed, issue the LIC 195. If the **Regional** Office has not been previously informed, the notice shall be mailed (certified mail return requested) or hand-delivered to the **operator** by not later than the following workday. If you are not returning to your office the day of the visit, call your office and make arrangements for the notice to be mailed within the specified time frame.

If the **operator** has taken no immediate action and an application has not been filed, make a follow-up visit within 30 days of the initial visit. The purpose of this visit is to determine whether the facility is continuing to provide care and supervision. If such is the case, consult with your supervisor to consider referral to the Regional Investigation Section for appropriate enforcement action (refer to Evaluator Manual Section 1-0600 through 1-0650).

80007 EXEMPTION FROM LICENSURE**80007**

(a) See Section 80018(d)(5) regarding eating disorders clinics.

(a)(5) POLICY

Facilities determined by the Community Care Licensing Division to be providing nonmedical care and supervision are not exempt from licensure under Health and Safety Code Section 1505(f). These facilities shall be subject to licensure as a community care facility. This statute does exempt church conducted facilities that adhere to a dependence on prayer or spiritual means for healing. However, this exemption is limited to those facilities that substitute prayer for medical/nursing services which would otherwise be provided for or required by residents in a health facility such as a nursing home or hospital as defined in Sections 1200 or 1250 of the Health and Safety Code.

For cases in which a facility is claiming an exemption from licensure the Community Care Licensing Division will determine if granting the exemption is valid. In order to make this determination, the staff of the Community Care Licensing Division Regional Office will:

1. Make an on-site inspection to evaluate the type and extent of care and supervision being provided to persons residing in the facility in question.
2. Contact the appropriate Department of Health Services licensing agency when it appears that medical care is required (though not provided) and ask them to determine if the facility is exempt from licensure as a health facility as defined by the Health and Safety Code. In cooperation with Department of Health Services, the Community Care Licensing Division staff may arrange joint visits with Department of Health Services licensing staff to evaluate the facility.