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## EVALUATOR MANUAL TRANSMITTAL SHEET

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<p><b><u>Distribution:</u></b></p> <p>_____ All Child Care Evaluator Manual Holders          _____ All Residential Care Evaluator Manual Holders  <u>  X  </u> All Evaluator Manual Holders</p>	<p style="text-align: center;"><b><u>Transmittal No.</u></b></p> <p style="text-align: center;">15RM-03</p> <hr/> <p style="text-align: center;"><b><u>Date Issued</u></b></p> <p style="text-align: center;">February 2016</p>
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**Subject:**

REFERENCE MATERIAL  
 Enforcement Actions  
 Section 1-0030 – Glossary

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**Reason for Change:**

Revisions to Section 1-0030 – Glossary

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**Filing Instructions:**

REMOVE: pages 10 through 12

INSERT: pages 10 through 12

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**Approved:**

*Original signed by Lilit Tovmasian*

*2/5/2016*

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**LILIT TOVMASIAN, Chief**  
 Policy Development Bureau  
 Community Care Licensing Division

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Date

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**1-0030 GLOSSARY** (Continued)**1-0030**

**Notice of Defense:** The formal notice submitted by an applicant who has been served with a Statement of Issues, or by a licensee who has been served with an Accusation, to request an Administrative Hearing in the case.

**Physical Abuse:** A physical injury which is inflicted by other than accidental means. Includes acts of physical abuse done at the direction of the licensee, facility employee and/or unknown suspect resulting in injuries.

**Plan of Correction:** A plan developed by the licensee or authorized facility representative and jointly agreed to by the Licensing Program Analyst as to how and when a deficiency(s) shall be corrected in order to bring the facility into compliance.

**Respondent:** In an administrative action, the party against whom the action is filed is known as the respondent. In licensing cases, the respondent is the licensee or applicant.

**Revocation:** The administrative action to void or rescind a license because of serious or chronic violations of licensing laws or regulations.

**Ritualistic Abuse:** Ritualistic abuse is a brutal form of child abuse that involves sexual, physical, psychological, and spiritual abuse and the use of frightening rituals.

**Sexual Assault:** Any illegal activity performed for the sexual gratification of any of the parties involved (e.g., rape, unlawful sexual intercourse, voyeurism, exhibitionism, and child molestation) including sexual contact in which one party used his or her position of trust to obtain sex (i.e. caregiver with a developmentally disabled client or teenage foster child).

**Statement of Facts:** A report from a Licensing Office requesting revocation of a license, denial of an application or exclusion of an employee from a facility. The Statement of Facts fully identifies a facility and its licensee, summarizes the violations with which a licensee is charged, and lists the witnesses who might testify to the violations. The Statement of Facts is always accompanied by copies of appropriate licensing reports and other documents detailing the alleged violations.

**Statement of Issues:** A formal written statement, or pleading, prepared by the Legal Division which sets forth the grounds upon which an initial license application has been denied by the local Licensing Office. A Statement of Issues is based on the Statement of Facts prepared by the Licensing Program Analyst.

**Subsection:** The subsection is the Regulation Section denoted by a small alpha after the main Regulation Section number. Example: Sections 87155(a)(2) and 87155(a)(5) are in the same subsection. Sections 87155(a) and 87155(b) are **not** in the same subsection.

**Suspicious Death:** Death of a client at a care facility, or while under the care of the facility, which is not clearly the result of natural causes or in which the causes are unknown.

**1-0030 GLOSSARY (Continued)****1-0030**

**Temporary Restraining Order:** A temporary or interim order issued by a Superior Court judge prohibiting a person or organization from engaging in or continuing some activity until a hearing can be held and the dispute fully litigated. Occasionally, temporary restraining orders are sought by licensees, and issued by local Superior Court judges, to prevent a temporary suspension order from going into effect. This is the only connection between a temporary suspension order and a temporary restraining order; they are otherwise unrelated legal remedies.

**Temporary Suspension Order:** A temporary order issued by the Deputy Director for Community Care Licensing Division which suspends a license prior to a hearing. Temporary suspension orders are issued, when imminent danger exists, to protect residents or clients of a facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. A temporary suspension order must be accompanied by an Accusation to revoke the license. A local Licensing Office **may not** order a licensed facility to stop operating. Only the Deputy Director for Community Care Licensing Division, or someone authorized to act in his or her stead, may issue a temporary suspension order.

**Unlicensed Facility:** A facility shall be deemed to be an unlicensed community care facility, Residential Care Facility for the Elderly, Residential Care Facility for the Chronically Ill or Child Care Center or Family Child Care Home if it is maintained and operated to provide nonmedical care, is not exempt from licensure and any one of the following conditions exists:

- The facility is providing care or supervision, as defined in the California Code of Regulations, Title 22, Sections 80001(c)(3) General Licensing Requirements, 82001(c)(3) Adult Day Programs, 86501(c)(3) Crisis Nurseries, 87101(c)(3) Residential Care Facilities for the Elderly, 87801(c)(3) Residential Care Facilities for the Chronically Ill, 89201(c)(3) Foster Family Homes, or 101152(c)(3) Child Care Centers.
- The facility is held out as or represented as providing care and supervision to a client, or clients not otherwise exempt from licensure.
- The facility accepts or retains residents who demonstrate the need for care and supervision whether the facility provides that care or not.
- The facility represents itself as a licensed community care facility, Residential Care Facility for the Elderly or Residential Care Facility for the Chronically Ill.

Please refer to Regulation Interpretations and Procedures for General Licensing Requirements Section 80006 and Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly Section 87106 for guidelines in determining whether an in-home supportive services arrangement should be licensed.

Facility licensure is not required where all adults in a care setting are receiving care and supervision through the In-Home Supportive Services Program.

Other arrangements of care and supervision should be assessed on a case-by-case basis.

**1-0040 CIVIL PENALTIES, GENERAL STATEMENT****1-0040**

The assessment of civil penalties is one method, in addition to the penalties of suspension, temporary suspension, or revocation that may be used to gain compliance from the licensee.

The purpose of civil penalties is to provide a tool for the Licensing Program Analyst to bring the licensee into compliance. This is only one of a number of tools and should be used within the entire scheme of enforcement to gain compliance. The use of a civil penalty is not intended to change any of the procedures normally used by the Licensing Program Analyst. Only after the appropriate process has been completed and the deficiencies documented, are civil penalties assessed to gain compliance.

A table is included in Section 1-0075 entitled "Quick Reference".

**1-0045 VIOLATIONS RESULTING IN ASSESSMENT OF CIVIL PENALTIES****1-0045**

The laws and regulations that authorize the California Department of Social Services to levy civil penalties can differ somewhat for each facility type. As a result, civil penalties may be assessed under various circumstances, depending on the type of facility and the violation cited.

However, certain violations will always result in the assessment of a civil penalty for all facility types. These include:

- Unlicensed operation.
- Background Check violations, which are **immediate** civil penalties.
- Violations warranting an immediate civil penalty in the amount of \$150 per day. (See EM Section 1-0070 for exceptions.)

For some facilities, civil penalties may be assessed for such things as:

- Failure to meet the Plan of Correction Date, see EM section 1-0060.
- Progressive civil penalties for repeat violations, see EM section 1-0065.

For Foster Family Agencies:

- A civil penalty of \$50 per day for each instance may be assessed for failure to provide the California Department of Social Services with a log of family homes certified and decertified as required.
- Note: Foster Family Agencies are cited for violations found in their Certified Family Homes. They are also assessed any applicable civil penalties. Certified Family Homes are not cited for violations or assessed penalties directly.

For all child care facilities, a civil penalty will result for:

- Failure to comply with posting requirements.

For all child care facilities, a civil penalty may be imposed for:

- Second or subsequent violation for failure to allow parent or guardian to enter and inspect facility, or for retaliation/discrimination stemming from a request to enter, or lodging a complaint.