

EVALUATOR MANUAL TRANSMITTAL SHEET

<p><u>Distribution:</u></p> <p><input checked="" type="checkbox"/> Adult and Senior Care Program <input type="checkbox"/> Children's Residential Program <input type="checkbox"/> Child Care Program <input type="checkbox"/> All Programs</p>	<p><u>Transmittal No.</u> 16RCFE-01</p> <hr/> <p><u>Date Issued</u> April 2016</p>
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Subject:

RESIDENTIAL CARE FACILITIES FOR THE ELDERLY
 Regulation Interpretations and Procedures
 Section 87107 – Exemption from Licensure

Reason for Change:

Revision to Section 87107 – Exemption from Licensure
 Adds new material concerning homeless shelters

Filing Instructions:

REMOVE: pages 7 through 10

INSERT: pages 7 through 10

Approved:

Original signed by Lilit Tovmasian

April 8, 2016

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 Date

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87107 EXEMPTION FROM LICENSURE**87107**

(a)(3)

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 1569.145(c). These facilities are subject to licensure as a residential care facility for the elderly. The law does exempt church-conducted facilities that depend on prayer or other spiritual means for healing. However, this exemption is limited to facilities that substitute prayer for medical/nursing services that would otherwise be provided for, or required by, residents in a health facility such as a nursing home or hospital as defined in Health and Safety Code Sections 1200 or 1250.

PROCEDURE

When a facility claims to be exempt from licensure, the Community Care Licensing Division will determine if the exemption is valid. To make this determination, licensing staff 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.
2. Contact the appropriate California Department of Public Health, Licensing and Certification **staff** when it appears that medical care is required (though not provided) and ask that agency to determine if the facility is exempt from licensure as a health facility as defined by the Health and Safety Code. Community Care Licensing Division staff may arrange joint visits with California Department of **Public** Health licensing staff to evaluate the facility.
3. Advise the facility operator(s)/administrator(s) that they are required to have a license as a Residential Care Facility for the Elderly when it is determined that care and supervision are needed and are being provided and/or medical care is not needed and is not being provided. Give the operator(s) and/or administrator(s) an opportunity to file an application for a license.

87107 EXEMPTION FROM LICENSURE (Continued)

87107

PROCEDURE (Continued)

4. For facilities subject to licensure, the following guidelines will be used in granting waivers/exceptions to **licensing requirements that conflict with the beliefs and practices of the religion**:
 - a. If the facility is conducted **by and for** the adherents of any well-recognized church or religious denomination that relies solely on prayer or other spiritual means for healing, the licensing agency will not require medical assessments, examinations, tests, health histories, or medical supervision and control of any resident or person working in the facility, provided the facility limits employment and admission for care only to adherents of the particular faith of those operating the facility.
 - b. In any **other** residential care facility for the elderly that admits a person adhering to a well-recognized faith that relies on prayer or other spiritual means for healing, medical assessments and examinations, tests and health histories may be excepted **on an individual basis**, except as follows: No exemptions will be granted to the requirement for a tuberculosis test for staff or residents, or to allow a resident with active communicable tuberculosis to reside in a facility. See Regulation Interpretations **and Procedures for Residential Care Facilities for the Elderly** Section 87411(f).
5. If a facility is being operated **by and for** the adherents of a particular faith or religion, such preference may be stated on the license.

(a)(4)

POLICY

Health and Safety Code Section 1569.145(d) was amended as follows to clarify which situations are exempt from licensure:

- (d) Any house, institution, hotel, congregate housing project for the elderly, or other similar place that is limited to providing one or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities; or that have residents independently accessing supportive services; provided, however, that no resident thereof requires any element of care and supervision or protective supervision as determined by the director....

The Residential Care Facilities for the Elderly Act now clarifies what is meant by “room and board” for purposes of determining places that are exempt from licensure as a Residential Care Facility for the Elderly.

Also exempt are facilities where residents independently access their own supportive services. In other words, the facility is not arranging for residents’ medical, dental or other health care services; transportation; recreational or leisure activities; social services or counseling services. The residents themselves are capable of accessing these supportive services. This does not, however, preclude these facilities from providing residents with resource and referral services.

87107 EXEMPTION FROM LICENSURE (Continued)**87107****(a)(4) POLICY (Continued)**

A homeless shelter is exempt from licensure as a Residential Care Facility for the Elderly. To qualify for exemption, the facility is prohibited from providing care and supervision, administering or dispensing prescription medications to homeless persons, or allowing a homeless person to reside permanently in the shelter.

Homeless shelters may provide certain acceptable services. These include temporary shelter, food/meals, clothing, transportation, personal grooming supplies, bathing facilities, laundry facilities, housing search assistance, job search assistance, advocacy, and counseling. These permitted services may appear to cross over with care and supervision requiring licensure; however, a homeless shelter that provides these services shall not be construed as providing elements of care and supervision and is exempt from licensure.

Due to the nature of the program, individuals who come to a homeless shelter may need care and supervision. If an evaluation by shelter staff indicates that a client is in need of care and supervision, the person will be referred for appropriate placement.

PROCEDURE

If a Licensing Program Analyst receives a complaint regarding a homeless shelter operating as an unlicensed facility, the Licensing Program Analyst must immediately discuss the complaint with his/her Licensing Program Manager to assess whether an unlicensed operation of a facility is occurring. In addition, the Licensing Program Analyst and Licensing Program Manager should consult with the enforcement attorney if necessary to obtain assistance interpreting requested documents provided by the operator. This determination will be made on a case-by-case basis. As part of the unlicensed operations complaint investigation, consideration should be made to the documentation provided by the operator demonstrating the status as a homeless shelter. This documentation may include, but not be limited to, a business license or other required permits if required by local ordinances to operate as a homeless shelter, or contracts with local governments to operate a homeless shelter. Local ordinances may have set requirements that must be met in order to operate a homeless shelter (e.g., permits, zoning requirements, maximum number of beds, and business licenses). Senate Bill 2 (Statutes of 2007) required local governments to identify a zone that can accommodate at least one year-round emergency shelter and sets parameters regarding local requirements such as permits and zoning requirements. Emergency shelters would be an example of a homeless shelter that would be exempt from licensure from the Department of Social Services. The Licensing Program Analyst must obtain the Licensing Program Manager's approval prior to issuing findings that a homeless shelter is operating as an unlicensed facility.

87107 EXEMPTION FROM LICENSURE (Continued)**87107**

(a)(9)

POLICY

California Code of Regulations, Title 22, Section 87107(a)(10) specifies that any “similar facility” to those exempted may be allowed to operate without being licensed as a Residential Care Facility for the Elderly as determined by the Director of the California Department of Social Services.

Monasteries and convents have been determined to be “similar” facilities; and, therefore, are exempt from licensure as a residential care facility for the elderly. When someone becomes a monk or nun, he or she takes on a new “family” that can independently access care—and the monastery or convent becomes their home for life. The monastery/convent is exempt from licensure because it is the home for each monk/nun residing there. Like a traditional family, members of the religious order contribute their efforts to the “family” and receive food, clothing and shelter from the “family” as needed. Members of the religious order do not go to their biological family for support, but rather depend on other members of the religious order.

If caregivers in a monastery/convent provide care for financial gain, or bring any outside person into the religious order and the facility to provide care and supervision, the monastery/convent will no longer be exempt.

PROCEDURE

Make an on-site inspection if there are complaints that (1) the caregivers in a monastery/convent are providing care for financial gain (i.e., compensation paid by the recipient exceeds the value of the services rendered), and/or (2) an individual from outside the religious order and the facility has been brought in and is providing care and supervision.

87108 INTEGRAL FACILITIES**87108**

(a)(3)

POLICY

Single site means at one location, or on the same premises. In other words, a facility may be comprised of three separate, self-contained buildings and be under one license as long as the buildings are physically located on the same premises, are managed by the same licensee, are components of a single program, and have a common mailing address.

87109 TRANSFERABILITY OF LICENSE**87109**

(b)

PROCEDURE

See Health and Safety Code Section 1569.87 in the Evaluator Manual Appendix.