



QUESTIONS AND ANSWERS ON CHILD CARE IN CALIFORNIA: LICENSE-EXEMPT CHILD CARE

1. WHAT IS LICENSE-EXEMPT CHILD CARE?

License-exempt child care is child care that can operate legally without a license.¹ *See* questions 6 to 13 for specific information about the types of providers who may be license-exempt.

Note: A child care provider who is legally required to have a license but does not have one is *not* license-exempt. Rather, he or she is operating illegally without a license, and penalties may apply for violating licensing laws.²

2. IS LICENSE-EXEMPT CHILD CARE THE SAME AS INFORMAL CHILD CARE OR REGULATION-EXEMPT CHILD CARE?

Yes. These terms are often used interchangeably. We use the term “license-exempt” child care because it clarifies that *licensing* standards do not apply to some child care providers.

3. DO ANY LICENSING REQUIREMENTS APPLY TO LICENSE-EXEMPT CHILD CARE PROVIDERS?

No. License-exempt providers do not have to follow Licensing requirements.³ However, they may be subject to requirements and regulations imposed by other agencies. *See* Question 14.

4. WHY DO PARENTS USE LICENSE-EXEMPT CHILD CARE?

In many cases, parents choose license-exempt care because they want a relative or other close acquaintance to care for their children, particularly because family members or friends share their culture or language. They may also choose license-exempt care because licensed child care is not available.

5. WHAT IS TRUSTLINE?

TrustLine is California’s voluntary registry for license-exempt child care providers. All child care providers who are registered with TrustLine have been fingerprinted and have been cleared through a check of criminal records by the California Department of Justice and the Federal Bureau of Investigation (FBI). They have been found to have no child abuse records or other criminal history that would make them inappropriate as child care providers.⁴ Call (800) 822-8490 or visit www.trustline.org for further information.

Note: Some child care providers who care for children with child care subsidies are required to be registered with TrustLine. *See* Question 16.

6. WHAT TYPES OF PROVIDERS ARE LICENSE-EXEMPT?

Many child care providers are license-exempt, including:

- A provider who cares only for his/her relatives,
- A provider who only cares for the children of one other family (other than

the provider's own children, if he or she has any children),

- Cooperative agreements (Co-ops) in which parents share responsibility for child care. *See* Question 9.
- Public recreation programs.
- Before- and after-school programs run by schools.⁵

7. WHAT TYPES OF RELATIVES ARE LICENSE-EXEMPT?

Examples of relatives who may be license-exempt child care providers are spouses, parents, adult siblings, aunts, uncles, and first cousins. Step-relatives and grandparents may also be license-exempt.⁶

8. IS THERE A LIMIT ON THE NUMBER OF CHILDREN THAT A LICENSE-EXEMPT CHILD CARE PROVIDER CAN TAKE CARE OF?

No. However, it is the experience of the Child Care Law Center that most relatives and informal child care arrangements generally involve small numbers of children.

9. WHAT REQUIREMENTS DO CO-OPS NEED TO MEET IN ORDER TO BE LICENSE-EXEMPT?

A co-op child care agreement among parents is license-exempt only if it meets the following conditions:

- Caregivers do not receive payment for services;⁷
- Parents rotate responsibility for care of all of the children equally among themselves;
- Every caregiver is a parent, legal guardian, or adult relative of at least one child in the cooperative; and
- No more than 12 children are cared for at any given time by any provider/parent.⁸

10. ARE RELIGIOUS (FAITH-BASED) CHILD CARE PROVIDERS LICENSE-EXEMPT?

No. In California, child care providers are not license-exempt just because they are religious, or faith-based.⁹ These providers are expected to obtain licenses and meet licensing requirements unless they qualify on some other basis for license-exemption.

11. ARE NANNIES LICENSE-EXEMPT?

Yes. Nannies are generally license-exempt because they care for the children of only one family and because they are caring for children in the children's homes, not the nanny's home.¹⁰ In addition, nanny shares, or arrangements between more than one family to rotate the services of one nanny in more than one home, are license-exempt.¹¹

12. DO NANNY PLACEMENT AGENCIES HAVE TO MEET ANY ADDITIONAL REQUIREMENTS?

Yes. Agencies may place only nannies who are registered with TrustLine and nannies who have applied to register with TrustLine. However, nannies who are not hired through a placement agency may not be required to be registered with TrustLine unless they are paid with child care subsidies.¹² *See* Questions 5 and 16.

13. WHAT TYPES OF PUBLIC RECREATIONAL PROGRAMS AND AFTERSCHOOL PROGRAMS ARE LICENSE-EXEMPT?

Public recreation programs, including summer camps, are license-exempt if they operate only during non-school hours or for fewer than 12 weeks each year.¹³ Before- and -after school programs that are operated by public or private schools are also license-exempt,¹⁴ as are the Boy and Girl Scouts, the Boys and Girls Club, and similar organizations.¹⁵

14. ARE SOME LICENSE-EXEMPT PROVIDERS REQUIRED TO FOLLOW RULES IMPOSED BY AGENCIES OTHER THAN LICENSING?

Yes. Although license-exempt child care arrangements are exempt from licensing by the Department of Social Services' Community Care Licensing Division, some are subject to requirements and regulations imposed by other agencies. For example, after-school programs run by the California Department of Education (CDE) may need to meet CDE guidelines.¹⁶

15. CAN LICENSE-EXEMPT PROVIDERS GET HELP FROM RESOURCE AND REFERRAL AGENCIES?

Yes. Resource and Referral agencies may make referrals to license-exempt providers.¹⁷ Check with your local Resource and Referral agency for more information about its policies. Also check what resources may be available from these agencies, such as lending libraries or trainings.

16. MAY LICENSE-EXEMPT CHILD CARE PROVIDERS BE PAID WITH CHILD CARE SUBSIDIES?

Yes. But license-exempt providers who are paid with child care subsidies may have to meet special requirements. Unless they qualify

for an exemption as a close relative, they may be required to register with TrustLine and to complete a Health and Safety Self-Verification.¹⁸ However, unlike licensed providers, license-exempt providers do not have to obtain fingerprints or criminal record checks for other individuals living in the home where care is being provided. When paid with child care subsidies, the only individual who *must* be TrustLined is the provider him/herself.¹⁹ See Question 5 and TrustLine's website at www.trustline.org for further information. Also check with your local child care subsidy agency.

17. WHAT APPEAL RIGHTS ARE AVAILABLE TO LICENSE-EXEMPT CHILD CARE PROVIDERS?

- License-exempt providers who are paid with child care subsidies do not have the right to appeal negative decisions about the subsidy payment, although parents who receive the subsidy can appeal.²⁰
- License-exempt providers can file a grievance with the agency that distributes their subsidy; each agency should develop written grievance policies and make them available to providers.²¹
- License-exempt providers can also appeal a decision by TrustLine if TrustLine denies the provider's application to be registered.²²

This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of August 2003, but the law changes often. This document is made available with the understanding that it does not render legal or other professional advice. If you need legal advice, you should seek the services of a competent attorney.

Useful Resources

- Call a **Resource and Referral** agency for specific information about local resources. Call the California Resource and Referral Network at (415) 882-0234 or visit their website at www.rrnetwork.org to get information about your local Resource and Referral agency.
- Call TrustLine at (800) 822-8490 or visit www.trustline.org.
- Contact Community Care Licensing Division at (916) 229-4500, or visit their website at www.cclcd.ca.gov for information about licensing.
- Visit the website of Legal Services of Northern California, www.lsn.net, for information about California laws.
- Call your **County Bar Association Referral Service** to find a private attorney or your local **Legal Aid** office. Look in the telephone book or visit the California Bar Association website at www.calbar.org.
- Call the **Child Care Law Center** at (415) 394-7144 for information about child care issues. We are a California and national support center for child care, and we provide the following services:
 - Information and Referral over the telephone on Mondays, Tuesdays, and Thursdays from 12 to 3 Pacific Standard Time.
 - Useful publications on our website, www.childcarelaw.org.
 - Provide legal representation only in cases that have an impact on many people.

¹ California Health and Safety Code § 1596.792, California Code of Regulations § 102358.

² California Health and Safety Code § 1596.80, .89, .890, .893(a-b), 1597.61, California Code of Regulations § 102393, 102357.

³ California Health and Safety Code § 1596.792, California Code of Regulations § 102358.

⁴ California Health and Safety Code § 1596.603, 1596.605, California Code of Regulations § 102370. See all of California Health and Safety Code Chapter 3.35: Child Care Provider Registration-TrustLine.

⁵ California Health and Safety Code § 1596.792, 22 California Code of Regulations § 102358.

⁶ 22 CCR § 101152(r)(2); DSS Evaluator Manual 01FCCH-01, May 2001 § 102358 (a): License Exemptions.

⁷ Although co-op participants cannot exchange money for childcare services, they can charge for outside services, including field trips. Also, participants cannot contribute supplies in lieu of fulfilling their childcare services. DSS Evaluator Manual 01FCCH-01, May 2001 § 102358 (a): License Exemptions.

⁸ California Health and Safety Code § 1596.792; See also 22 California Code of Regulations § 102358.

⁹ California Health and Safety Code § 1596.792. See also Montessori Schoolhouse of Orange County, Inc. v. Department of Social Services, 120 Cal. App. 3d 248, 175 Cal. Rptr. 14 (California Court of Appeals, 1981) (Montessori schools not exempt). Johnson v. Department of Social Services, 123 Cal. App. 3d 878, 177 Cal. Rptr. 49 (CA Court of Appeals, 1981) (religious child cares not exempt from restriction on corporal punishment). North Valley Baptist Church v. McMahon, 696 F. Supp. 518 (U.S. District Court for the Eastern District of California, 1988) affirmed, 893 F.2d 1139, (United States Court of Appeals, 9th Circuit, 1990), certiorari denied, 496 U.S. 937, 110 S.Ct. 3215, 110 L.Ed. 2d 663 (United State Supreme Court, 1990) (religious child cares not exempt from restriction on corporal punishment).

¹⁰ California Health and Safety Code § 1596.792, 22 California Code of Regulations § 102358.

¹¹ DSS Evaluator Manual 01FCCH-01, May 2002, §102358 (page 3).

¹² California Health and Safety Code § 1596.65, See also California Health and Safety Code § 1596.792, 22 California § Code of Regulations.

¹³ California Health and Safety Code § 1596.792(g).

¹⁴ California Health and Safety Code § 1596.792(h).

¹⁵ California Health and Safety Code § 1596.793.

¹⁶ California Education Code §§ 8482 *et. seq.*

¹⁷ California Education Code § 8212(b)(1); See also California Education Code § 8216 (requiring Resource and Referral agencies to distribute information to families about the family's ability to chose a license-exempt provider).

¹⁸ California Health and Safety Code § 1596.66(a); 1596.67(a), California Education Code § 8358(a); CDE Management Bulletin § 97-33, December 1997. Parents and license-exempt providers must self-certify the following about a child care provider: child care premises are safe, provider is free from communicable disease, provider has given the parent two character references whom the parent has contacted, and other related information, including need for smoke detectors and children's rights.

¹⁹ California Health and Safety Code § 1596.66-67 (mentioning only the provider him/herself when discussing TrustLine requirements for providers being paid with child care subsidies). Compare California Health and Safety Code §1596.871(b)(1)(A)-(D) (requiring the applicant for licensure *and* specified other individuals to be fingerprinted and undergo a criminal record check); 22 CCR §102370(a) (stating that all adults residing in the home will obtain a criminal record clearance or exemption prior to being issued a license).

²⁰ 5 CCR § 18120 *et seq.*, California Welfare and Institutions Code sec. 10951, California Department of Social Services Manual of Policies and Procedures § 22-0009.1.

²¹ 5 CCR § 18223(c).

²² California Health and Safety Code § 1596.607.