

KNOW THE LAW ABOUT LICENSE EXEMPT CARE IN CALIFORNIA

1. What is “License-Exempt” child care?

“License-exempt” child care is child care that does not legally need a license to operate.¹ The answers to questions 4 to 10 explain what types of child care are license-exempt.

Note: A child care provider who does not have a license, when the law requires one, is illegally operating without a license, **not** license-exempt. Illegal operation without a license may result in a Licensing citation, a \$200 per day fine, or even a misdemeanor criminal charge for danger to the health and safety of the children in care.²

2. Is License Exempt child care the same as Informal Child Care, Regulation Exempt Child Care, or Family, Friend and Neighbor Care?

Terms like “informal care” and “family, friend and neighbor care” refer to care provided only for the provider’s relatives or for one family other than that of the provider. Because these are very common types of license-exempt child care, these terms are often used interchangeably with “license-exempt” child care. We use the term “license-exempt” child care because (1) there are other types of license-exempt care, such as parent-coops and public recreation programs, and (2) it clarifies that what these types of care have in common is that licensing rules do not apply to them.

¹Cal. Health & Safety Code § 1596.792, Cal. Code Regs. tit. 22, § 102358.

² Cal. Health & Safety Code §§ 1596.80 (operation of a child care facility requires a current, valid license), 1596.89 (Licensing’s right to take court action to stop illegal operation), 1596.890 (willful and repeated violation constitutes a misdemeanor carrying a fine of up to \$1,000 and/or imprisonment in county jail up to 180 days), 1596.893a and 1596.893b (citation process in response to illegal operation), 1597.61 (cease and desist letter process in response to illegal operation); Cal. Code Regs. tit. 22, §§ 102357 and 102393 (explaining Licensing’s authority with respect to illegal operation without a license and the potential for fines).

3. Why do parents use License-Exempt care?

In many cases, parents want a family member or other person they already know well to care for their children, and that person is not licensed. This may be because the person shares the family's culture or language. It may be because the parents best trust the person to care for their baby, or to give the special care their child needs because of a disability or medical condition. Parents may also choose license- exempt care because of a variable work schedule, or because licensed child care is not available nearby.

4. What types of providers are License Exempt?

Many types of 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 the provider has any children),
- Parents who share child care responsibilities through Cooperative (Co-op) agreements that meet certain rules. See Question 7.
- Public recreation programs that meet certain rules.
- Before- and after-school programs run by schools that meet certain rules.
- Other types of license-exempt programs can be found in [Health and Safety Code § 1596.792](#).³

5. What types of relatives are License-Exempt providers?

Many kinds of relatives can provide care without a license. Relatives means:

- Spouses,
- Parents,
- Adult brothers and sisters,
- Aunts and uncles,
- Nephews and nieces,
- First cousins,
- "Grand" or "great-grand" relatives in any of these categories, and
- Step-relatives in any of these categories, even after the marriage no longer exists because of death or divorce.⁴

³ Cal Health & Safety Code § 1596.792; Cal. Code Regs. tit. 22, § 102358.

⁴ Cal. Code Regs. tit. 22, § 101152(r)(2).

6. Is there a limit on the number of children that a License-Exempt child care provider can take care of?

No, so long as the care otherwise meets the definition of one of the types of license-exempt care.⁵ However, it is the experience of the Child Care Law Center that most child care in which children are all relatives or all belong to only one family other than the provider's own generally involve small numbers of children.

7. What requirements do Cooperatives (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:

- There is no payment of money or in-kind income for care services;⁶
- 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.⁷

8. Are religious (faith based) child care providers or Montessori schools License Exempt?

No. In California, child care providers are not license exempt just because they are religious, or faith based, and they are not license-exempt because they use "school" in their name.⁸ If they provide child care, they are expected to get and meet the requirements of a child care license, unless they are license-exempt for some other reason.

⁵ Note that the definition of a license-exempt child care co-op includes that no more than 12 children are receiving care in the same place at the same time. Cal. Health & Safety Code § 1596.792(e)(4).

⁶ Although co-op participants cannot pay money for child care services, they can pay for the cost of activities, including for enrichment while participants provide care and supervision or for field trips, and can contribute snacks, games, pillows, or other in-kind materials. See Cal. Health & Safety Code § 1596.792(e)(1)(defining requirements for license exempt co-op child care arrangements).

⁷ Cal Health & Safety Code § 1596.792; See also Cal. Code Regs. tit.22, § 102358.

⁸ *Id.* See also North Valley Baptist Church v. McMahan, 696 F. Supp. 518 (U.S. District Court for the Eastern District of California, 1988) aff'd, 893 F.2d 1139, (9th Cir. 1990), cert. denied, 496 U.S. 937, (1990) (application of the Child Day Care Facilities Act to religious child care is not unconstitutional); Montessori Schoolhouse of Orange County, Inc. v. Department of Social Services, 120 Cal. App. 3d 248 (1981) (Montessori schools that provide care within the meaning of the Child Day Care Facilities Act are not exempt from licensure).

9. Are nannies license-exempt?

Nannies are generally license-exempt because they care for the children of only one family other than the nanny's own family.⁹ Nannies who provide care for more than one family at the same time, in what are sometimes called "nanny-shares," are **not** license-exempt, even if the care is not in the nanny's home.

10. 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 under 20 hours each week and fewer than **12 weeks** each year.¹⁰ Before-and after-school programs that are operated by public or private schools are also license-exempt,¹¹ as are the Boy and Girl Scouts, the Boys and Girls Club, and similar organizations.¹²

12. Can License-Exempt providers get help from Resource and Referral agencies?

Yes. Many Resource and Referral agencies offer trainings on child health and development and pre-licensing support that license-exempt providers may find helpful. They can help parents for whom license exempt providers work apply for child care subsidies to help pay for care. Resource and Referral agencies can also give license exempt providers referrals.¹³ Check with your local Resource and Referral agency about what resources it may make available, such as lending libraries or trainings, and about its policies with respect to referrals.

13. I have been operating without a license, how can I apply for one?

Some license-exempt child care providers decide that they wish to become a licensed child care provider, so that, for example, they can take on the care of children of additional families in their home. If you have been operating a license-exempt child care

⁹ Cal. Health & Safety Code § 1596.792, Cal. Code Regs. tit. 22, § 102358.

¹⁰ Cal. Health & Safety Code § 1596.792(g).

¹¹ Cal. Health & Safety Code § 1596.792(h).

¹² Cal. Health & Safety Code § 1596.793.

¹³ Cal. Educ. Code §§ 8212(a)(2)(A)(i) and (b)(Resource and Referral agencies can make referrals to unlicensed child care if it is license-exempt and the referral process should maximize parental access and choice); See also Cal. Educ. Code § 8216 (requiring Resource and Referral agencies when making referrals to give information to families about their ability to choose a license exempt provider).

and wish to become licensed, you may contact your local Licensing office.

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 rules imposed by other agencies. License-exempt providers who get paid with child care subsidies have to follow rules imposed by the California Department of Social Services division and local contractors that administer California's child care subsidy programs.

15. What is Trustline?

TrustLine is California's background check registry for 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.¹⁴ License-exempt providers do not have to register with TrustLine in order to provide child care. License-exempt providers may choose to register with Trustline on their own, or by agreement with a family for whom they will work. License-exempt providers need to register with Trustline to get work through a nanny placement agency, or to get paid with child care subsidies.

Call **(800) 82-8490** or visit <http://trustline.org/> for further information.

17. May license-exempt child care providers be paid with child care subsidies?

Yes. The government offers financial assistance, or "subsidies," to qualified families to help them pay for child care. License-exempt providers who are paid with child care subsidies must register with TrustLine and complete a Health and Safety Self-Certification form ([CCP 1](#)), unless they are a close relative.¹⁵ A close relative means someone who is by marriage, blood, or court decree, the grandparent, aunt, or uncle of the child in care.¹⁶

¹⁴ Cal. Health & Safety Code §§ 1596.603, 1596.605; Cal. Code Regs. tit. 22, § 102370. See Cal. Health & Safety Code Chapter 3.35: Child Care Provider Registration (Trustline requirements).

¹⁵ Cal. Health & Safety Code §§ 1596.66(a) and 1596.67(a); Cal. Welf. & Inst. Code § 10375 (Added by Stats. 2021, Ch. 116, Sec. 260)(providing for form for certifying health and safety requirements).

¹⁶ Cal. Health & Safety Code §§ 1596.66(a) and 1596.67(a).

The only individual in the provider's household who must go through the TrustLine process is the provider. 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.¹⁷

See the TrustLine website at www.TrustLine.org for further information. Also check with your local child care subsidy agency.

Note: Cooperative arrangements are not eligible for subsidies because no money is exchanged for care.¹⁸

You may provide care to a child eligible for subsidized child care while going through the TrustLine process.¹⁹ If you clear the Trustline registration process, you will get paid by the state for that time, as follows:

Child care providers serving families receiving child care administered by the California Department of Social Services (CDSS) will be paid for the care they provided while undergoing the TrustLine registration process, regardless of how long it takes.

Providers serving CalWORKs Stage 1 families can receive up to **120 days** of retroactive payment once the TrustLine process is successfully completed.²⁰

18. What are the payment rates for License-Exempt providers?

The California Budget Act of 2021 increased the maximum amount that can be reimbursed for license-exempt child care.

¹⁷ Cal. Health & Safety Code § 1596.67 (mentioning only the provider when discussing TrustLine requirements for providers being paid with child care subsidies). Compare Cal. Health & 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); Cal. Code Regs. tit. 22, § 102370(a) (stating that all adults residing in the home will obtain a criminal record clearance or exemption prior to being issued a license).

¹⁸ Cal. Health & Safety Code § 1596.792; Cal. Code Regs. tit. § 102358.

¹⁹ Cal. Code Regs. tit. 5 § 18227(c) (Allowing license exempt providers to provide care for 30 days for children in the Alternative Payment Program); Cal. Code Regs. tit. 5 § 18411(c)(2)(C) (Allowing the same in the CalWORKs Stage 2 services); Cal. Code Regs. tit. 5 § 18426 (Allowing the same in CalWORKs Stage 3 services); MPP §§ 47-260.14, 47-301.22, 47-620.2, 47-630; Cal. Dep't of Soc. Services (CDSS), All County Letter (ACL) 08-04, New regulations for TrustLine registry and requirements for license exempt child care providers (2008), <https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl08/08-04.pdf>.

²⁰ Cal. Health & Safety Code § 1596.67(a); CDSS ACL 08-04 (2008) <https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl08/08-04.pdf>.

Based on this change in law, effective **January 1, 2022**, the maximum amount available for child care assistance will be **70%** of the family child care home rate established by the regional market rate ceilings.²¹

The Reimbursement Ceilings for Subsidized Child Care are published on the CDSS website at: <https://rcscc.adm.dss.ca.gov/>.

19. 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 a fair hearing to appeal negative decisions about the subsidy payment or overpayment determinations, although parents who receive the subsidy do.²²
- License- exempt providers can file a grievance with the agency that pays them their subsidy if they are unhappy about something the agency has done; each agency must develop written grievance policies and make them available to providers.²³
- License- exempt providers can also appeal a decision by TrustLine if the agency denies the provider's application to be registered.²⁴

Useful Resources

- Your local Child Care Resource and Referral agency will give you specific information about local resources. Call the California Resource and Referral Network at (415) 882-0234 or visit them at www.rrnetwork.org the agency serving your community.
- For information about TrustLine, call (800) 822-8490 or visit www.TrustLine.org.
- Contact Community Care Licensing Division at (916) 657-2346, or visit their Child Care Licensing Program website at <https://www.cdss.ca.gov/inforesources/child-care-licensing> for information about licensing.
- 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. You can find free and low-cost legal services at www.lawhelpca.org.

²¹ Cal. Welf. & Inst. Code § 10374.5(c) (Added by Stats. 2021, Ch. 116, Sec. 260).

²² Cal. Code Regs. tit. 5, § 18120 et seq. (explaining that "parent(s)" have a right to a hearing), Cal. Welf. & Inst. Code § 11466.24 (relatives but not providers listed as having right to review of overpayment determination), *Morales v. McMahon* 223 Cal. App. 3rd 184 (1990)(parents have a right to a fair hearing to appeal adverse decisions about their child care benefits).

²³ Cal. Code Regs. tit. 5 § 18223(c).

²⁴ Cal. Health & Safety Code § 1596.607.

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