

# KNOW THE LAW: When Licensing Finds a Problem at Your Family Child Care Home

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## 1. If Licensing finds a problem at my child care home, will it give me a written report about what it found?

**Yes.** If California Community Care Licensing Division’s Child Care Licensing Program (“Licensing”) finds a problem—called a “deficiency”— during a site visit, it will notify you in writing using form LIC 809 or LIC 9099<sup>1</sup>

The form that Licensing will use for the citation will depend on how it found the problem. If Licensing finds a problem during a routine visit, it will notify you in writing on form LIC 809, the Facility Evaluation Report. This is the official report of a non-complaint related inspection.

If Licensing comes to your home to investigate a complaint from a parent or someone else about your child care, then after an investigation is completed, the Licensing Analyst will make a Complaint Investigation Report on form LIC 9099.<sup>2</sup> These forms are not an opportunity for the provider to agree or disagree. They are forms for Licensing to document the problem and make sure the provider knows what the problem is. The form LIC 9099 report will categorize Licensing’s findings in response to a complaint in one of four ways:

- (1) Needs Further Investigation;
- (2) Substantiated, meaning that the Licensing Analyst determined that the allegation that the family child care provider violated the law or regulation is correct;
- (3) Unsubstantiated, meaning that the Licensing Analyst cannot determine or prove whether or not the allegation was correct; or
- (4) Unfounded, meaning that the Licensing Analyst found the allegation to be untrue.<sup>3</sup>

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<sup>1</sup> CAL. HEALTH & SAFETY CODE § 1597.56(a).

<sup>2</sup> CAL. DEP’T SOC. SERVS., COMPLAINTS, EVALUATOR MANUAL, NO. 21RM-01, § 3-2503 at 283 (Jul. 2021) (Complaint Investigation) <https://www.cdss.ca.gov/Portals/9/CCLD/EM/Complaints.pdf>.

<sup>3</sup> CAL. DEP’T SOC. SERVS., COMPLAINTS, EVALUATOR MANUAL, NO. 21RM-01, § 3-2607 at 315-319 (Jul. 2021) (Is the Complaint Unfounded, Unsubstantiated, or Substantiated?) <https://www.cdss.ca.gov/Portals/9/CCLD/EM/Complaints.pdf>; CAL. DEP’T SOC. SERVS., *Forms/Brochures*, LIC

Licensing will ask you to sign the Form 809 or Form 9099 report with its findings. Signing the report does not mean you agree with Licensing's findings. It means that you acknowledge that you received the form and understand your appeal rights.

**You have a right to appeal any of the findings in these forms within 15 days.**<sup>4</sup>

## 2. What actions can Licensing take if it finds a problem?

Licensing can also take a variety of actions, depending on the severity of the problem and how long the problem persists. It can take the following actions:

- Licensing might give a **“verbal or written consultation”**, without giving a citation.<sup>5</sup>
- Licensing might give a **citation** with a **“plan of correction”** that the provider will need to follow.<sup>6</sup>
- For less serious violations (type B or type C), the provider might be able to **correct the problem on the spot** and not have to receive a citation.<sup>7</sup>
- For type A violations, Licensing will always **issue a citation**, even if the provider immediately fixes the problem.<sup>8</sup>
- Licensing might levy a **“civil penalty”**. Civil penalties are monetary fines that licensed or unlicensed providers must pay to Licensing for failing to comply with applicable laws and regulations.<sup>9</sup> These fines are not criminal penalties.
- Licensing might take an **“administrative action”** such as **revoking** or **suspending** the license.<sup>10</sup>

## 3. What happens if Licensing finds a minor problem?

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809 (last visited Mar. 7, 2022), <https://www.cdss.ca.gov/cdssweb/entres/forms/English/LIC809.pdf> (Facility Evaluation Report); CAL. DEP'T SOC. SERVS., *Forms/Brochures*, LIC 9099 (last visited Mar. 7, 2022), <https://www.cdss.ca.gov/Portals/9/EMUForms/I-L/LIC9099.pdf> (Complain Investigation Report).

<sup>4</sup> CAL. HEALTH & SAFETY CODE §§ 1596.842(b)(1)(right to appeal) and 1597.58(k)(1)(15 days to submit written request for formal review).

<sup>5</sup> CAL. DEP'T OF SOC. SERVS., FACILITY EVALUATION/VISIT, EVALUATOR MANUAL, No. 08RM-02 § 3-4400 at 26 (June 2008)

<https://www.cdss.ca.gov/Portals/9/CCLD/Old/res/pdf/facilityevaluation.pdf>.

<sup>6</sup> CAL. DEP'T OF SOC. SERVS., FACILITY EVALUATION/VISIT, EVALUATOR MANUAL, No. 09RM-18 § 3-4200 at 17 (Nov. 2009)

<https://www.cdss.ca.gov/Portals/9/CCLD/Old/res/pdf/facilityevaluation.pdf>.

<sup>7</sup> CAL. DEP'T OF SOC. SERVS., FACILITY EVALUATION/VISIT, EVALUATOR MANUAL, No. 09RM-18 § 3-4200 at 19 (Nov. 2009)

<https://www.cdss.ca.gov/Portals/9/CCLD/Old/res/pdf/facilityevaluation.pdf>; CAL. DEP'T OF SOC. SERVS., FACILITY EVALUATION/VISIT, EVALUATOR MANUAL, No. 08RM-02 § 3-4210 at 25 (June 2008) <https://www.cdss.ca.gov/Portals/9/CCLD/Old/res/pdf/facilityevaluation.pdf>.

<sup>8</sup> CAL. DEP'T OF SOC. SERVS., FACILITY EVALUATION/VISIT, EVALUATOR MANUAL, No. 09RM-18 § 3-4200 at 17 (Nov. 2009)

<https://www.cdss.ca.gov/Portals/9/CCLD/Old/res/pdf/facilityevaluation.pdf>.

<sup>9</sup> CAL. DEP'T OF SOC. SERVS., ENFORCEMENT ACTIONS, EVALUATOR MANUAL, No. 18RM-05, § 1-0030, at 7 (Sep. 2018) (Definition of Civil Penalties)

[https://www.cdss.ca.gov/Portals/9/CCLD/EM/Enforcement\\_Actions\\_18RM05.pdf](https://www.cdss.ca.gov/Portals/9/CCLD/EM/Enforcement_Actions_18RM05.pdf). For more information about policies and procedures surrounding assessment of civil penalties, see § 1-0040 at 12 (Civil Penalties General Statement) and § 1-0045 at 12 (Violations Resulting in Assessment of Civil Penalties). For payment options, see CAL. DEP'T OF SOC. SERVS., OFFICE FUNCTIONS, EVALUATOR MANUAL, No. 02RM-03, § 2-7000, at 30 (Jan. 2002) <https://www.cdss.ca.gov/Portals/9/CCLD/EM/OfficeFunctions.pdf>.

<sup>10</sup> CAL. HEALTH & SAFETY CODE § 1597.58.

There are three kinds of Licensing violations: Type A, Type B, and Type C.

Many deficiencies that Licensing finds during site visits to family child care homes are not serious problems that pose an immediate danger to a child in care. For example, paperwork may be stored in the wrong place or food menus may not be dated. Licensing calls these minor problems Type C violations or “technical conditions.” Type C violations are ones that do not present an immediate or potential risk to the health, safety or personal rights of clients in care.<sup>11</sup> Generally, Licensing will just give a verbal or written consultation and will not issue a citation for technical violations.

Problems that are not currently serious but might become serious if they are not fixed are considered Type B violations. Examples of Type B violations are missing paperwork or not enough clean dishes on hand for the next meal.<sup>12</sup> If a Type B violation is fixed during the site visit, Licensing can choose to respond with only a verbal or written reminder.

If the problem is repeated or Licensing is concerned that it may become more serious, Licensing may issue a citation to the provider. The citation may include a “plan of correction” to ensure that the violation is resolved and does not reoccur. The plan of correction will give a reasonable amount of time to fix the problem. It will also describe what evidence the provider needs in order to show that the problem has been fixed.<sup>13</sup> The citation and plan of correction are written on the Form LIC 809 or Form LIC 9099.<sup>14</sup>

For the Type B violations that are less serious and can be fixed during the site visit, the provider will still receive a copy of the Form LIC 809 or Form LIC 9099, but the form will not include a citation. The licensing analyst will either verbally advise the provider or give the provider a written consultation on Form LIC 9102TV, which will not become part of the provider’s public file.<sup>15</sup>

If a less serious problem is not resolved by the date given in the plan of correction, Licensing may assess a civil penalty, or fine, that a provider must pay to it each day, past the date in the plan of correction, until Licensing finds that the provider has fixed the problem.<sup>16</sup>

A civil penalty may be due immediately, for certain deficiencies.<sup>17</sup> In that case, Licensing will give you a Civil Penalty Assessment, Form LIC 421CC. You have 15 days to appeal the findings in

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<sup>11</sup> CAL. DEP’T OF SOC. SERVS., FACILITY EVALUATION/VISIT, EVALUATOR MANUAL, No. 08RM-02, § 3-4200 at 20 (June 2008) <https://www.cdss.ca.gov/Portals/9/CCLD/Old/res/pdf/facilityevaluation.pdf>.

<sup>12</sup> CAL. DEP’T OF SOC. SERVS., FACILITY EVALUATION/VISIT, EVALUATOR MANUAL, No. 09RM-18 § 3-4200 at 19 (Nov. 2009) <https://www.cdss.ca.gov/Portals/9/CCLD/Old/res/pdf/facilityevaluation.pdf>.

<sup>13</sup> CAL. HEALTH & SAFETY CODE § 1597.56.

<sup>14</sup> CAL. DEP’T OF SOC. SERVS., DOCUMENTATION, EVALUATOR MANUAL, No. 19RM-02 § 3-3011 at 5 (Mar. 2019) <https://www.cdss.ca.gov/Portals/9/CCLD/EM/Documentation .pdf>.

<sup>15</sup> CAL. DEP’T OF SOC. SERVS., FACILITY EVALUATION/VISIT, EVALUATOR MANUAL, No. 08RM-02 § 3-4400 at 26 (June 2008) <https://www.cdss.ca.gov/Portals/9/CCLD/Old/res/pdf/facilityevaluation.pdf>.

<sup>16</sup> CAL. HEALTH & SAFETY CODE § 1597.56.

<sup>17</sup> CAL. HEALTH & SAFETY CODE § 1597.56.

a Form LIC 421CC, just as you have 15 days to appeal the findings in a Form LIC 809 or LIC 9099.<sup>18</sup>

A provider can also appeal any other finding of deficiency, even if there is not a fine associated with it. The provider must appeal in writing within 15 days and provide all of their supporting documentation.<sup>19</sup>

For more information, see “[Appeal Question],” below.

#### 4. What must Licensing consider when creating a plan of correction?

When developing a plan of correction, Licensing must take the following factors into consideration:

- The gravity of the violation;
- The history of previous violations;
- The number of children affected by the violation; and
- The availability of equipment or personnel necessary to correct the violation.<sup>20</sup>

#### 5. What types of problems does Licensing regard as serious?

The following are some examples of problems that Licensing views as serious. A serious deficiency means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of the children in a child care center.<sup>21</sup> Licensing designates these “Type A deficiencies.” Some examples are:

- Failure to obtain a required criminal record clearance and Child Abuse Central Index check;
- Failure to follow fire safety requirements;
- Violations of personal rights that have a direct negative impact on either the physical or emotional well being of clients and children in care;
- Not having a working telephone;
- Failure to ensure that needed medical care is provided;
- Improper, insufficient, or dangerous food service;
- Failure to meet care and supervision requirements;
- Building and grounds that do not comply with regulations, including fences and swimming pools;
- Faulty or unsafe fixtures, furniture, equipment and supplies;
- Unavailable or unsafe water supply.<sup>22</sup>

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<sup>18</sup> CAL. HEALTH & SAFETY CODE § 1597.58(j)-(k).

<sup>19</sup> CAL. HEALTH & SAFETY CODE § 1597.58(k).

<sup>20</sup> CAL. HEALTH & SAFETY CODE § 1597.56.

<sup>21</sup> Cal. Code Regs., Tit. 22 § 101152(s)(3).

<sup>22</sup> CAL. DEP’T OF SOC. SERVS., FACILITY EVALUATION/VISIT, EVALUATOR MANUAL, No. 09RM-18, § 3-4200 at 17 (Nov. 2009) <https://www.cdss.ca.gov/Portals/9/CCLD/Old/res/pdf/facilityevaluation.pdf>.

## 6. What happens if Licensing finds a serious problem?

Licensing may take “Administrative Action” when a problem is serious or a provider has not corrected or cannot correct deficiencies. For example, an Administrative Action might be taken if a child care provider were repeatedly over capacity, if there were substantiated allegations of child abuse, if a child was injured or died in a child care facility under suspicious circumstances, or if the provider’s conduct posed a risk to a child.<sup>23</sup> The following are some of the most common administrative actions:

- Denial of an initial application for a license;
- Closing an unlicensed facility that is operating illegally;
- Temporary suspension of a license;
- Revocation of a license.

## 7. When may Licensing suspend or revoke a family child care provider’s license?

Licensing may suspend or revoke a family child care provider’s license for any of the following reasons:

- Violation of certain laws, rules, or regulations;
- Aiding, abetting or permitting a violation of a law, rule or regulation;
- Conduct in the operation or maintenance of a family child care home that threatens, or is bad for, the health, morals, welfare, or safety of either a child in the child care home, or the people of the State of California;
- Conviction of certain crimes committed by the provider or a resident of the family child care home;
- Failure to comply with requirements for training in preventative health practices.<sup>24</sup>

If Licensing believes that a family child care provider committed any of these violations, it may, but does not have to, suspend the license immediately. Licensing immediately suspends a license if it believes such action is necessary to protect a child from physical or mental abuse, abandonment, or any other substantial and immediate threat to health or safety.<sup>25</sup>

## 8. What happens when Licensing decides to suspend my license?

If Licensing makes the decision to suspend a license, the provider is notified of the temporary suspension and given a description of the accusation. The child care provider may appeal the decision to suspend the license.<sup>26</sup> If the license is suspended, the family child care provider can no longer care for children and must post a visible notice of the suspension in the child care home. If the provider fails to post this notice, a penalty is applied.<sup>27</sup>

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<sup>23</sup> CAL. DEP’T OF SOC. SERVS., ENFORCEMENT ACTIONS, EVALUATOR MANUAL, No. 18RM-05, § 1-0030, at 6 (Sept. 2018) [https://www.cdss.ca.gov/Portals/9/CCLD/EM/Enforcement\\_Actions\\_18RM05.pdf](https://www.cdss.ca.gov/Portals/9/CCLD/EM/Enforcement_Actions_18RM05.pdf).

<sup>24</sup> CAL. HEALTH & SAFETY CODE § 1596.885; CAL. CODE REGS. tit. 22, § 102402(a).

<sup>25</sup> CAL. HEALTH & SAFETY CODE § 1596.886; CAL. CODE REGS. tit. 22, § 102402(b).

<sup>26</sup> CAL. HEALTH & SAFETY CODE § 1596.886; CAL. CODE REGS. tit. 22, §§ 102402(c)-(d), 102402.1(c). *See also* form LIC 9058.

<sup>27</sup> CAL. HEALTH & SAFETY CODE § 1596.8895.

## 9. Do I have a right to appeal administrative actions taken by licensing?

Yes, a child care provider has a right to appeal the suspension, denial, or revocation of a license.<sup>28</sup> You have 15 days to do so.<sup>29</sup> Please see the CCLC publication “Questions and Answers for Family Child Care Providers: Appeals and Complaints with Licensing.”



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This publication is intended to provide general information about the topic covered. It is made available with the understanding that the Child Care Law Center is not engaged in rendering legal or other professional advice. We believe it is current as of March 2022 but the law changes often. If you need legal advice, you should consult an attorney who can specifically advise or represent you.

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<sup>28</sup> CAL. HEALTH & SAFETY CODE § 1596.842(b)(1)(general right to appeal); CAL. CODE REGS. tit. 22, § 102402.1 (c)(right to appeal denial or revocation for failure to pay civil penalties).

<sup>29</sup> CAL. HEALTH & SAFETY CODE §§ 1597.58(j)(1) and (k)(1)(15 days to submit written request for a formal review of civil penalty or deficiency).