



## CHILD CARE LAW CENTER

221 PINE STREET | 3RD FLOOR | SAN FRANCISCO, CA 94104 | V 415.394.7144 | F 415.394.7140  
WWW.CHILDCARELAW.ORG | INFO@CHILDCARELAW.ORG

# Questions and Answers for Family Child Care Providers: Licensing Visits to Family Child Care Homes June, 2006

### **1. Who can make a complaint to Licensing about my family child care home?**

The law says that anyone may file a complaint against a family child care provider.<sup>1</sup> This could include the parent of a child cared for in a family child care home, a parent of a child who used to receive care in a family child care home, a neighbor, a landlord or anyone else.

### **2. Do I have the right to know the substance of the complaint as well as who made the complaint?**

No. The law says that, unless the person making the complaint specifically requests otherwise, the substance of the complaint and the identity of the person who made the complaint will not be disclosed to the child care provider.<sup>2</sup>

### **3. What if someone makes a complaint with no reasonable basis or with the intent to harass me?**

In most instances, when it receives a complaint, Licensing conducts a preliminary review and investigation. The only circumstance in which a complaint is not investigated is if Licensing determines that the complaint has **no** reasonable basis **or** was willfully intended to harass a family child care provider. In this event the complaint is marked “confidential” and is not disclosed to

the public. Child care providers are notified within 30 days that this action has been taken.<sup>3</sup>

### **4. May I terminate a family from my care if I believe they made a complaint to licensing?**

No. Whether or not Licensing conducts an investigation, retaliation against a parent for making a complaint violates the law.<sup>4</sup> Licensing always conducts an investigation unless it believes that a complaint is intended to harass or has no reasonable basis. Sometimes, when Licensing investigates a family child care provider, the provider believes that the complaint was made by an angry neighbor who wants the family child care home to close, or by a parent who failed to pay fees that were owed, or by someone else. It would be illegal for a family child care provider to terminate a family just because they made a complaint to Licensing, even if the complaint was without merit.

### **5. If Licensing determines that the complaint is not intended to harass and may have a reasonable basis, what does Licensing do?**

Licensing does a preliminary review and conducts an onsite investigation within 10 days after a complaint is made, except in situations where the visit would adversely affect an investigation by Licensing or some other governmental agency.<sup>5</sup>

## **6. When may Licensing staff visit my child care home?**

Licensing may conduct home visits under a variety of circumstances. Some visits are scheduled in advance, and others are unannounced. Visits may be conducted as a result of complaints, to enforce plans of correction or randomly to comply with Licensing regulations. For instance, when a complaint is made, Licensing will generally visit a family child care home to investigate. In such a situation it is illegal for anyone to inform a provider that a visit is about to be made.<sup>6</sup>

## **7. May Licensing staff conduct an unannounced visit to my home at any time of day?**

Unannounced site visits may be conducted only during a family child care home's normal business hours or at any time that child care services are being provided.

## **8. Does Licensing staff have access to my entire home?**

The inspection is limited to the portions of the home in which family child care services are provided or to which children have access.<sup>7</sup>

## **9. Does Licensing need a warrant to search my home?**

Courts have found that Licensing may conduct site visits of family child care homes without search warrants, so long as the visits are conducted reasonably and only in the portions of the home where children are being cared for, or are believed to be being cared for, during hours while the child care home is in operation. Warrantless inspections are permitted because the expectation of privacy that you may have in your own home is reduced when you operate a regulated business like child care, and because the

warrantless searches further the government's vital interest in protecting children.<sup>8</sup>

## **10. May Licensing inspect my home before I obtain my license?**

Yes, an applicant for a family child care home license **must** receive a site visit before the license is granted.<sup>9</sup> Licensing should follow the procedures described below in conducting these visits.

## **11. May Licensing conduct random, unannounced visits?**

Yes. In addition to the initial site visit that is part of the application and visits in response to any complaints, Licensing conducts random unannounced visits. Licensing is required to conduct random, unannounced "spot" visits to a certain number of family child care homes each year. These visits may occur only during the facility's normal business hours or at any time child care services are being provided, and are limited to the portions of the home where family child care services are provided or to which the children have access.<sup>10</sup>

## **12. What happens if Licensing finds a problem during a site visit?**

If Licensing finds a problem, called a "deficiency," during a site visit it may conduct follow-up visits as appropriate to enforce the correction of the violations.<sup>11</sup>

A provider who is found to have a serious deficiency or who has had past problems with Licensing is subject to annual unannounced visits. After each of these follow-up visits, Licensing determines whether the violation has been corrected; if it has been and no further serious violations are found, then Licensing will return to the usual visiting schedule.<sup>12</sup>

### **13. Does Licensing staff report child abuse to law enforcement?**

Like family child care providers themselves, Licensing staff (except for clerical staff) are mandated reporters of child abuse who are legally required to report any known or suspected instances of physical or sexual abuse of any child to a Child Protective Agency, including law enforcement. So, if Licensing staff knows or believes that a child has suffered abuse in a family child care home, a child abuse report must be made.<sup>13</sup> See the Child Care Law Center's publication on Legal Issues for Family Child Care Providers: Mandated Child Abuse Reporting.

Licensing will open or reopen an investigation into a family child care home if a court or judicial officer finds that an injury to a child may have occurred in child care.<sup>14</sup>

### **14. What are my rights during a site visit?**

A family child care provider has many rights when Licensing conducts a site visit, including the following:

- The right to require Licensing staff to identify themselves;
- The right to be advised of the type of visit being conducted (response to a complaint, plan of correction, pre-licensing, etc.). Family child care providers do not have the right to know who filed a complaint, or the substance of a complaint;
- The right to be treated as a professional, with dignity and respect;
- The right to receive an accurate report of the evaluator's findings for each observed deficiency;
- The right to review licensing laws, regulations and policies;

- The right to an impartial investigation of all complaints;
- The right to receive a written citation that explains any violation and provides a reasonable length of time for compliance;<sup>15</sup>
- The right to use the licensing report (LIC 809) to agree or disagree with the deficiencies, to have an exit interview with a signed copy of LIC 809, and to be given the name of the Licensing analyst's supervisor; and
- The right to access the public file on any facility and to purchase a copy of the file at reasonable cost.<sup>16</sup>

### **15. What can I expect from Licensing during a site visit?**

Licensing assumes that family child care providers want to offer high-quality care and meet the licensing requirements. Licensing staff are supposed to be respectful during site visits and should recognize that they are visiting the provider's home.<sup>17</sup>

However, during a site visit, some family child care providers may feel that Licensing is on a fault-finding mission and does not appreciate the positive aspects of the family child care home. Licensing reports do not generally make positive statements because they are designed to uncover problems; positive statements might make it difficult later for Licensing to take action against a child care provider if a deficiency is discovered.<sup>18</sup> Even if a family child care provider and the parents of children in care believe that the care provided is excellent and the home is sparkling clean, it is unlikely that the provider will ever receive a licensing report that uses positive language.

Licensing may photograph a family child care home and may take pictures of children. However, Licensing should obtain

permission from the children’s authorized representatives before taking pictures of the children except when documenting abuse.<sup>19</sup>

Licensing may interview children or staff privately to determine compliance with regulations or prevent violations.<sup>20</sup> When Licensing interviews children regarding suspected child abuse, it follows certain protocols established by law. For example, for school-aged children, Licensing interviews children in school when possible and gives the child the option of being interviewed in private or in the presence of an adult member of the school staff.<sup>21</sup>

Licensing may inspect any part of the family child care home in which family child care services are provided and any portion of the home to which children have access.<sup>22</sup>

When Licensing conducts a site visit of a licensed child day care facility, the department must post a written notice near the main door of the facility that includes (1) the date of the site visit, (2) whether the facility was cited for violating any state standards or regulations as a result of the site visit, (3) whether the facility is required to post the site visit report for 30 consecutive days, (4) a statement explaining that copies of the site visit report may be obtained by contacting the department and the telephone number to call in order to obtain a copy of the site visit report, and (5) the name and telephone number of a person in the department who may be contacted for further information about the site visit report.<sup>23</sup>

## **16. May Licensing review records in my files during a site visit?**

Licensing may review a number of documents in a family child care provider’s

files, the staff files, and the children’s files during a site visit.

## **17. What can I expect when a complaint investigation has been completed?**

After an investigation is completed, the Licensing Analyst makes a report on form LIC 809; this form is a family child care provider’s first opportunity to agree or disagree with Licensing’s findings as a result of the site visit.

If a Licensing Analyst is investigating a complaint from a parent or someone else, the report will categorize the findings in one of three ways:

- (1) Substantiated, meaning that the Licensing Analyst determined that the allegation that the family child care provider violated the law or regulation is correct;
- (2) Inconclusive, meaning that the Licensing Analyst cannot determine or prove whether or not the allegation was correct; or
- (3) Unfounded, meaning that the Licensing Analyst found the allegation to be untrue.<sup>24</sup>

All substantiated and inconclusive reports become part of a family child care provider’s licensing file, which is available for review by the public. Unfounded reports are kept in the provider’s confidential file, meaning that they are not available for review by the public.

If a Licensing Analyst finds a problem during a site visit, the Analyst may issue a citation or assess a civil penalty. If the violation is serious or repeated, the Analyst may initiate an “Administrative Action” such as a temporary suspension or license revocation.

For more information about the types of penalties Licensing can impose, see the Child Care Law Center's Q&A entitled "When Licensing Finds a Problem at Your Family Child Care Home." For more information about how to appeal an action by Licensing, see the Child Care Law Center's Q&A entitled "Family Child Care Provider Appeals and Complaints with Licensing."

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*This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of June 2006, 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.*

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<sup>1</sup> CAL. HEALTH & SAFETY CODE § 1596.853(a)

<sup>2</sup> *See id.* § 1596.853(b)

<sup>3</sup> *See id.* § 1596.853(c)

<sup>4</sup> *See id.* § 1596.857(b)

<sup>5</sup> *See id.* § 1596.853 (c)

<sup>6</sup> *See id.* § 1596.8915

<sup>7</sup> *See id.* § 1597.55a(f)

<sup>8</sup> Kathleen Rush, Eleanor Fraser and San Mateo County Daycare Association v. Mario Obledo, Secretary of California Health and Welfare Agency, 756 F. 2d 713 (9<sup>th</sup> Cir., 1985); *See also*, Golden Day Schools, Inc. v. Carolyn Pirillo, 118 F. Supp. 2d 1037, (U.S. District Court for the Central District of California, 2000), holding that a warrantless search by Licensing, apparently conducted at the request of another governmental agency against which the plaintiff was involved in litigation, was permissible, but that seizure of files was unconstitutional. These files were seized with little care, some were lost, and an employee of Plaintiff was hit in the head in that process.

<sup>9</sup> *See id.* § 1597.55a&b

<sup>10</sup> CAL. HEALTH & SAFETY CODE §§1596.8535, 1597.55a, 1597.55b; CAL. CODE REGS. tit. 22, §102392. *See also*, DSS Evaluator Manual § 3-1150, Family Child Care Homes (Transmittal No. 04RM-03, Feb, 2004), p. 15.

<sup>11</sup> *See id.* § 1597.55a(d), b(e)

<sup>12</sup> *See*, McDonald v. State of California, 230 Cal.App.3d, 319 (California Court of Appeals, 1991), holding that Licensing was not liable when it failed to visit a family child care home and address violations of licensing laws.

<sup>13</sup> *See id.* § 1596.8865 (Licensing reports to CPS); CAL. PENAL CODE § 11165-11174.3 (the requirements imposed on child abuse reporters). *See also* DSS Evaluator Manual § 4-0010, Mandatory Reporting of Child Abuse, and § 4-1100, Child Abuse Reporting Requirements for Child Care Facilities (Transmittal No. 99RM-03, July 1999), pp.1-3 (<http://cclcd.ca.gov/res/pdf/99RM-03%20PDF%20Master%20Doc.pdf>).

<sup>14</sup> *See id.* § 1596.8866

<sup>15</sup> CAL. HEALTH & SAFETY CODE § 1596.842(a), 1597.56.

<sup>16</sup> *See id.* § 1596.482(a)(8-11)

<sup>17</sup> DSS Evaluator Manual § 8-5050, Entry into Family Child Care Homes (Transmittal No. 00RM-02, Jan. 2001) p. 5.

<sup>18</sup> DSS Evaluator Manual § 3-3100, Documentation: Licensing Report (Transmittal No. 02RM-12, July 2002), p.3.

<sup>19</sup> DSS Evaluator Manual § 3-3510, Photography Report (Transmittal No. 02RM-12, July 2002), pp. 10-11.

<sup>20</sup> CAL. CODE REGS. tit. 22, § 102391(b)

<sup>21</sup> DSS Evaluator Manual § 3-2620.1, Guidelines for conducting interviews in abuse cases (Transmittal No. 03RM-08, Aug. 2003), p. 42

<sup>22</sup> CAL. CODE REGS tit. 22, § 102391(c).

<sup>23</sup> CAL. HEALTH & SAFETY CODE § 1596.817

<sup>24</sup> DSS Evaluator Manual § 3-2635, Making the Determination: Is the Complaint Unfounded, Inconclusive or Substantiated? (Transmittal No. 03RM-08, Aug. 2003), pp. 50-52.