



# CHILD CARE LAW CENTER

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## Know the Law About License Exempt Child Care in California

### 1. What is License-Exempt Child Care?

License-exempt child care is child care that can operate legally without a license.<sup>1</sup> *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.<sup>2</sup>

### 2. I've Been Operating Without a License, How Can I Apply for One?

Operating illegally without a license can result in criminal or financial liability. It is possible to obtain a license without penalty but there may be additional sanctions.<sup>3</sup> If you have concerns speak with an attorney before applying.

### 3. Is License-Exempt Child Care the Same as Informal Child Care, Regulation-Exempt Child Care or Family, Friend and Neighbor 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.

### 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. This may be because family members or friends share their culture or language, or the child may require special care due to a disability or medical condition. Parents may also choose license-exempt care because licensed child care is not available.

### 5. 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.
- Other categories of license exempt programs can be found in Health and Safety Code § 1596.792.<sup>4</sup>

### 6. 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.<sup>5</sup>

### **7. 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.

### **8. 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;<sup>6</sup>
- 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.<sup>7</sup>

### **9. 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.<sup>8</sup> These providers are expected to obtain licenses and meet licensing requirements unless they qualify on some other basis for license-exemption.

### **10. 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.<sup>9</sup> 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.<sup>10</sup>

### **11. Do Nanny Placement Agencies Have to Meet any Additional Requirements?**

Yes. Agencies may only place 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 registered with TrustLine and do not have to register unless they are paid with child care subsidies.<sup>11</sup> See Questions 15, 16, and 17 for more about TrustLine.

### **12. 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.<sup>12</sup> Before- and after-school programs that are operated by public or private schools are also license-exempt,<sup>13</sup> as are the Boy and Girl Scouts, the Boys and Girls Club, and similar organizations.<sup>14</sup>

### **13. 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.<sup>15</sup>

#### **14. Can License-Exempt Providers Get Help from Resource and Referral Agencies?**

Yes. Resource and Referral agencies may make referrals to license-exempt providers.<sup>16</sup> 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.

#### **15. What is TrustLine?**

TrustLine is California's registry for license-exempt child care providers. Some child care providers who care for children with child care subsidies are required to be registered with TrustLine. 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.<sup>17</sup> Call (800) 822-8490 or visit [www.TrustLine.org](http://www.TrustLine.org) for further information.

#### **16. Can I Provide Care While I'm Going Through the TrustLine Process?**

Yes. License-exempt providers may provide care while going through the TrustLine process.<sup>18</sup>

#### **17. If I Provide Care to a Family that Is Eligible for Subsidized Child Care, Can I Be Paid by the State Retroactively for this Time?**

Yes, if you clear the registration process. However, if registration is unsuccessful the family is responsible for payment of child care services. Currently, child care providers serving families receiving subsidies administered by the California Department of Education (CDE) 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.<sup>19</sup>

#### **18. May License-Exempt Child Care Providers Be Paid with Child Care Subsidies?**

Yes. The government offers financial assistance, in the form of subsidies, to qualified families to contribute to the payment of child care. 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 are required to register with TrustLine and to complete a Health and Safety Self-Verification.<sup>20</sup> 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* go through the TrustLine process is the provider him/herself.<sup>21</sup> See the TrustLine website at [www.TrustLine.org](http://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.<sup>22</sup>

### 19. What are Payment Rates for License-Exempt Providers?

The California Budget Act of 2010 reduced the maximum amount that can be reimbursed for license-exempt child care. Based on this change in law, effective November 1, 2010, the maximum amount available for child care assistance will be reduced by 10 percent. The California Department of Education (CDE) has determined the new ceilings by county. The Reimbursement Ceilings for Subsidized Child Care are published on the CDE website: <http://www.cde.ca.gov/fg/aa/cd/ap/index.aspx>

### 20. 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.<sup>23</sup>
- 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.<sup>24</sup>

- License-exempt providers can also appeal a decision by TrustLine if the agency denies the provider's application to be registered.<sup>25</sup>

### 21. As a License-Exempt Provider, Am I Protected by Federal and State Labor Laws?

Currently, state and federal law holds that license-exempt providers who provide care in the child's home are considered to be "domestic servants" and thus "employees." As "employees," general labor protections such as minimum wage apply to these providers. However, license-exempt providers caring for children in their own home are considered independent contractors and are not protected by state or federal regulations on minimum wage, workers compensation or other labor laws.

*This document provides general information about the topic covered. This document does not render legal or other professional advice. It is believed to be current and accurate as of January 2011, but the law changes often. If you need legal advice, you should consult a competent attorney who can represent you or advise you specifically.*

#### 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.rnetwork.org](http://www.rnetwork.org) the agency serving your community.
- Call TrustLine at (800) 822-8490 or visit [www.TrustLine.org](http://www.TrustLine.org).
- Contact Community Care Licensing Division at (916) 657-2346, or visit their website at [www.cclcd.ca.gov](http://www.cclcd.ca.gov) 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](http://www.calbar.org). You can find free and low-cost legal services at [www.lawhelpca.org](http://www.lawhelpca.org)

<sup>1</sup> CA Health & Safety Code § 1596.792, 22 CCR § 102358.

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<sup>2</sup> CA Health & Safety Code §§ 1596.80, .89, .890, .893(a-b), 1597.61, 22 CCR §§ 102393, 102357.

<sup>3</sup> *Id.*

<sup>4</sup> CA Health & Safety Code § 1596.792, 22 CCR § 102358.

<sup>5</sup> 22 CCR § 101152(r)(2); DSS Evaluator Manual 01FCCH-01, May 2001 § 102358 (a): License Exemptions.

<sup>6</sup> Although co-op participants cannot exchange money for child care 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.

<sup>7</sup> CA Health & Safety Code § 1596.792; See also 22 CCR § 102358.

<sup>8</sup> *Id.* See also Montessori Schoolhouse of Orange County, Inc. v. Department of Social Services, 120 Cal. App. 3d 248, (1981) (Montessori schools not exempt). Johnson v. Department of Social Services, 123 Cal. App. 3d 878, 1981) (private child care could be restricted from administering corporal punishment even with parental consent). North Valley Baptist Church v. McMahon, 696 F. Supp. 518 (U.S. District Court for the Eastern District of California, 1988) *aff'd*, 893 F.2d 1139, (9<sup>th</sup> Cir., 1990), *cert. denied*, 496 U.S. 937, (1990) (religious child care not exempt from the Child Care Facilities Act).

<sup>9</sup> CA Health & Safety Code § 1596.792, 22 CCR § 102358.

<sup>10</sup> DSS Evaluator Manual 01FCCH-01, May 2002, §102358 (page 3).

<sup>11</sup> CA Health & Safety Code § 1596.65.

<sup>12</sup> CA Health & Safety Code § 1596.792(g).

<sup>13</sup> CA Health & Safety Code § 1596.792(h).

<sup>14</sup> CA Health & Safety Code § 1596.793.

<sup>15</sup> CA Educ. Code §§ 8482 *et. seq.*

<sup>16</sup> CA Educ. Code § 8212(b)(1); See also CA Educ. Code § 8216 (requiring Resource and Referral agencies to distribute information to families about the family's ability to choose a license-exempt provider).

<sup>17</sup> CA Health & Safety Code § 1596.603,1596.605, 22 CCR § 102370. See all of CA Health & Safety Code Chapter 3.35: Child Care Provider Registration-TrustLine.

<sup>18</sup> MPP §§ 47-260.14, 47-301.22, 47-601, 47-620.2j, 47-630; Cal. Dep't of Soc. Services, ACL 08-04, New regulations for TrustLine registry and requirements for license-exempt child care providers (2008), <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl08-04.pdf>.

<sup>19</sup> CA Health & Safety Code § 1596.67(a); DSS ACL 08-04 (2008)

<http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl08-04.pdf>.

<sup>20</sup> CA Health & Safety Code §§ 1596.66(a), 1596.67(a); CA Educ. 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.

<sup>21</sup> CA Health & Safety Code § 1596.66-67 (mentioning only the provider him/herself when discussing TrustLine requirements for providers being paid with child care subsidies). Compare CA 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); 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).

<sup>22</sup> CA Health & Safety Code § 1596.792 (2010); 22 CCR § 101158.

<sup>23</sup> 5 CCR § 18120 *et seq.*, CA Welf.& Inst. Code § 10951, CA Dep't of Soc. Services MPP § 22-0009.1.

<sup>24</sup> 5 CCR § 18223(c).

<sup>25</sup> CA Health & Safety Code § 1596.607.