

FACTS YOU NEED TO KNOW

Group Home And Short-Term Residential Therapeutic Program

BOARD OF DIRECTORS OR GOVERNING BODY

CDSS

CALIFORNIA
DEPARTMENT OF
SOCIAL SERVICES

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INTRODUCTION

The California Department of Social Services licenses group homes and short-term residential therapeutic programs (STRTP) which provide care, supervision, and services for children at risk. The Department's goal is to protect the health and safety of the children who live in both facility types. Senate Bill 933 (Chapter 311, Statutes of 1998) required the Department to develop this booklet. Assembly Bill (AB) 403 (Chapter 773, Statutes of 2015) and AB 1997 (Chapter 612, Statutes of 2016) established a new licensed facility, an STRTP, and required the Department to include the STRTP in this booklet. The purpose of this booklet is to provide all members of the board of directors or governing body with information on their duties and responsibilities and to enhance their knowledge regarding the operation of group homes and STRTPs.

This booklet is being provided to all group home and STRTP board of directors or governing bodies. [Health and Safety Code \(HSC\) Section 1520.1\(b\)](#) requires, as a condition of licensure, that every member of the board of directors or governing body shall, prior to becoming a member of the board of directors or governing body sign a statement that they understand their legal duties and obligations as a member of the board of directors or governing body and that the operation of a group home or an STRTP is governed by laws and regulations that are enforced by the department, as set forth in this booklet. This statement is located on the next page, form LIC 9165, Board of Director Statement.

This booklet is designed to provide information about the obligations of members of the boards of directors or governing body for group homes and STRTPs. However, this information serves only as a guide. Do not rely on this booklet for all of your legal responsibilities as a member of the board of directors or governing body. This booklet does not constitute legal advice. For more information, please contact your attorney. It would be prudent for potential members of the board of directors or governing body for a proposed nonprofit public benefit corporation to seek out the assistance of an attorney with the appropriate expertise before taking any steps in forming the corporation or other nonprofit entity.

In addition, this booklet provides some information about the laws, regulations, and interim licensing standards (ILS) that govern the operation of group homes and STRTPs. Do not rely on this booklet for all of your legal responsibilities. As a member of the board of directors or governing body, you must be familiar with the laws, regulations, and ILS that govern group homes and STRTPs. Knowledge of these rules is important when making decisions. When you make decisions, it is also important to know the needs of children and/or Nonminor Dependents (NMD) who are placed in your facilities. Many of these children and/or NMDs have more intensive emotional and behavioral needs that may have originated from abuse neglect, or the dependency/juvenile justice system; and to meet their treatment and safety needs it is necessary to place them temporarily in a structured residential care placement for stabilization.

It is important that you understand what is in this booklet. If you have any questions regarding group home or STRTP laws, regulations, or ILS you may visit the Community Care Licensing's website at <https://www.cdss.ca.gov/inforesources/community-care-licensing> to search for the local Community Care Licensing Regional Offices in your area for assistance. Or you may refer to Community Care Licensing's website to search and print the information requested.

For additional information regarding the Continuum of Care Reform (renamed in 2021 to the System of Care Branch), please visit the Continuum of Care Reform website at <https://www.cdss.ca.gov/inforesources/continuum-of-care-reform>.

BOARD OF DIRECTORS OR GOVERNING BODY STATEMENT (LIC 9165)

Health & Human Services Agency

California Department of Social Services

BOARD OF DIRECTOR OR GOVERNING BODY STATEMENT

IMPORTANT– Before completing, see reverse for instructions.

Licensees are required to provide a copy of the Community Care Licensing's publication, Facts You Need to Know, Group Home and Short-Term Residential Therapeutic Program Board of Directors, to each member of their board of directors or governing body. The members of the board of directors or governing body are required to read and sign the statement below. This form must be completed by all members of the board of directors or governing body. The signing of this form by all members, and prospective members, of the board of directors or governing body is a condition of licensure.

I have read and understand my legal duties and obligations as a member of the board of directors or governing body and I also understand that the group home and short-term residential therapeutic program's operation is governed by laws, regulations, and interim licensing standards that are enforced by the Department of Social Services, as set forth in the publication, Facts You Need to Know, Group Home and Short-Term Residential Therapeutic Program Board of Directors.

I declare that I have received a copy and I have read and understand the information contained in the publication, <u>Facts You Need to Know, Group Home and Short-Term Residential Therapeutic Program Board Of Directors</u>.		
1. Facility Name		2. Facility Number
3. Your Name (Print Clearly)		4. Daytime Telephone No.
5. Your Mailing Address		
6. City	7. State	8. Zip
9. Signature	10. Date You Joined Board	11. Date of Signature

Note: The publication, Facts You Need to Know, Group Home and Short-Term Residential Therapeutic Program Board of Directors booklet is only as current as the initial publishing date or any later revision date. Therefore, the booklet may not include information on the most current law, regulation, and interim licensing standard changes that you may need to know. Members of the Board of Directors or governing body should ensure that they are informed of law, regulation, and interim licensing standard changes

BOARD OF DIRECTORS OR GOVERNING BODY STATEMENT INSTRUCTIONS (LIC 9165)

Health and Human Services Agency

California Department of Social Services

BOARD OF DIRECTOR OR GOVERNING BODY STATEMENT INSTRUCTIONS

General Information

Each member of the board of directors or governing body must sign this form. Prospective members of the board of directors or governing body must read the Group Home and Short-Term Residential Therapeutic Programs Board of Directors booklet and sign the above LIC 9165 form before joining the board or governing body. This form may be copied and given to each of your members for their signature. The signed forms must be kept at the Group Home or STRTP administrative office. All signed forms must be available to Department staff for inspection upon request.

Instructions for LIC 9165 form

Please type or clearly print the information being requested by each item number.

Items 1 - 2: Enter the facility name and number. When a corporate licensee has more than one facility, it is important that the same facility number is used for all members of the board of directors or governing body. This ensures that each and all members are associated and identified with the correct licensee. It is acceptable to enter this on behalf of the member.

Items 3 -10: The member of the board of directors or governing body enters their name, daytime telephone number, complete mailing address, signature and date. **All signatures must be original.**

LEGAL NOTICES

This publication does not constitute legal advice. Moreover, it is not intended, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. No limitations are hereby placed on oversight, investigative, or other lawful functions of the California Department of Social Services.

The website and PDF links reflected within this publication are intended to be as accurate as possible, yet may have changed over time. They are provided as resources and for informational purposes only.

NONPROFIT ORGANIZATION REQUIREMENT

A private STRTP must be organized and operated on a nonprofit basis. (California Health and Safety Code (HSC), Section 1502.) A group home or STRTP shall be organized and operated on a nonprofit basis before they can be reimbursed for a foster child and/or NMD placed in a group home or STRTP. An STRTP that receives payments from regional center or mental health funds may have additional requirements related to those funding sources.

PUBLIC BENEFIT CORPORATIONS

The majority of the registered nonprofit corporations in California are organized as public benefit corporations. Under California law, a public benefit corporation must be formed for public or charitable purposes and may not be organized for the private gain of any person. A public benefit corporation cannot distribute profits, gains, or dividends to any person.

Public benefit corporations often qualify for exemption from income tax. However, the failure of a public benefit corporation to qualify for income tax exemption does not necessarily free the organization and its responsible directors or officers from accountability of charitable assets. Public benefit corporations must register and report to the California Attorney General's Registry of Charitable Trusts.

Although public benefit corporations may qualify for important benefits, including exemption from income tax, they are subject to important legal restrictions. One critical restriction is that the assets of a public benefit corporation are considered irrevocably dedicated to charitable purposes and cannot be distributed for private gain. If the corporation's board of directors or governing body later decides they do not wish to operate the corporation as a charity, they may dissolve the corporation, but cannot take back its assets. Legally, those assets must be used for the charitable purposes for which they were raised and must be transferred to another nonprofit that has the same or similar purposes. Therefore, it is important to carefully consider the practical implications before taking any steps to form a public benefit corporation.

TRUSTS

A trust may be created by language in a will or written trust instrument. The trust creates legal obligations for the person, called a "trustee," who holds title to and manages the assets of the

trust. When the trust has a charitable purpose, the trust is called a “charitable trust.” Charitable trusts are subject to the Attorney General’s oversight and the trustees must register and file annual reports.

UNINCORPORATED ASSOCIATIONS

Any individual or group of persons who operates a charitable organization, but does not create a nonprofit corporation or a trust, may be treated under California law as an “unincorporated association.” Unincorporated associations that solicit charitable donations are under the oversight of the California Attorney General and must register and file annual reports. Under this classification, the individuals may be exposed to substantial risk of personal liability if the association is sued.

OTHER LEGAL FORMS OF CHARITABLE ORGANIZATIONS

Although charities may be formed as limited liability companies or limited partnerships, exercise caution and consult with legal counsel before using these legal forms of charitable organizations. To the extent a limited liability company or limited partnership accepts property to be used for charitable purposes, these entities are also considered charitable trustees and are required to register and report to the California Attorney General’s Registry of Charitable Trusts.¹

For more information on nonprofits and charitable organizations as discussed in the Corporations section of this publication, please refer to the California Attorney General’s Guide for Charities located on the Attorney General’s website at <https://www.oag.ca.gov/charities>.

CORPORATIONS

A corporation is a distinct legal entity under California law. A new corporation is born when its Articles of Incorporation are filed with the Secretary of State. A nonprofit (public benefit) corporation is different from a for-profit corporation. While a for-profit corporation has owners whose goal is to create a profitable return on their investment, a nonprofit corporation is created for charitable or educational purposes, (i.e., to benefit the public at large) and no part of its net earnings may inure to the benefit of any individual or shareholder. In the case of a group home or STRTP nonprofit corporation, charitable purposes would include providing shelter, care and supervision to children in need. The basic steps and minimum requirements for forming a nonprofit corporation are summarized in the question and answer format below.

¹ Attorney General’s Guide for Charities, California Department of Justice Charitable Trusts Section, June 2021.

FREQUENTLY ASKED QUESTIONS ABOUT CORPORATIONS, BYLAWS, AND BOARD OF DIRECTORS OR GOVERNING BODY

1. How is a nonprofit corporation formed?

Non-profit corporations, like other corporations, are formed by filing with the California Secretary of State the required forms, starting with the Articles of Incorporation Nonprofit Public Benefit Form ARTS-PB-501(c)(3) along with any other forms required such as the Statement of Information (SI-100). Non-profit corporations must also register with the California Attorney General's Registry of Charitable Trusts. More information may be found on the Office of the Attorney General's webpage located here: <https://oag.ca.gov/charities>. Please consult with your legal advisor.

2. What are Articles of Incorporation?

The articles of incorporation include: 1) the official name of the corporation, 2) a statement that the corporation is a nonprofit corporation, 3) The name and street address of a person in California who will accept legal notices, and 4) the initial street address of the corporation. ([California Corporations Code Section 5130](#)). If you may any changes or amendments to your articles of incorporation, you must file the changes with the Secretary of State. Please refer to the California Secretary of State at <http://www.sos.ca.gov/business-programs/> for more information.

3. What are Bylaws?

The bylaws provide the rules for governing and operating the corporation ([CORP Section 5151](#)). While a corporation may put these rules in its articles of incorporation, most elect to place them in bylaws because it is simpler to change them. Bylaws and changes to them, do not need to be filed with the Secretary of State.

Bylaws must state the number of directors of the corporation unless it is stated in the articles. Unless restricted by law or the articles of incorporation, the board of directors or governing body can set, adopt and amend bylaw provisions. The following are typical provisions included in bylaws:

- ◆ The time, place, and method used to call meetings of members, directors, and committees.
- ◆ The duties, method of election and qualification of directors.
- ◆ The length of directors' terms.
- ◆ The manner of appointment, duties, compensation, and the length of officers' terms.
- ◆ The requirements of reports to members.
- ◆ The rules for admitting and removing members.

- ◆ The appointment and authority of committees.
- ◆ The special requirements for the percentage of member and director votes needed to take certain actions.
- ◆ The number of directors needed to make a quorum.

4. Where do I keep my Articles of Incorporations and Bylaws?

Current copies of the articles of incorporation and bylaws must be kept at your principal California office ([CORP Section 5160](#)). A copy of the bylaws and articles of incorporation should be kept up to date by filing copies of amendments as they are adopted by resolutions of the board of directors or governing body (CORP Sections [5215](#) and [5810-5820](#)).

5. What are Members?

A California public benefit corporation may offer membership or create classes of members to individuals or corporate entities. Such memberships would be established and defined in the corporation's articles of incorporation or bylaws. California law does not require a public benefit corporation to have members. (CORP Code section 5310)

If the public benefit corporation does have members, members have the right to vote for the election of directors to the board of directors, dissolution, merger, sale of assets, and changes to the articles of incorporation and bylaws. If the public benefit corporation does not have members, any action that would require member approval vests with the board of directors. (Corporations Code section 5056)

6. What is a Board of Directors?

The board of directors ("board") is the governing body of the corporation. The board consists of persons named in the articles of incorporation or bylaws or elected by the creators of the corporation and later board members to act as members of the board.

BOARD OF DIRECTORS OR GOVERNING BODY DUTIES

The directors are given the authority and responsibility for managing the nonprofit corporation so that it can prosper and meet its mission by adopting ethical and lawful governance and sound financial management policies. The directors meet and make decisions together as the board of directors or governing body ("board").

The board is ultimately responsible for making sure a corporation is run properly. If it fails to do this, individual directors may be held responsible.

All corporate powers are exercised under the board's direction ([California Corporations Code Section 5210](#)). While certain powers may be assigned to committees, officers, or employees, their use of that power and their actions are subject to the board's review, direction and control.

As a practical matter, the day-to-day activities should be assigned to a particular staff member, sometimes called an Executive Director, or to an administrator. While some important decisions may be delegated, those decisions must be reviewed and approved by the board. The board cannot simply abdicate its responsibility by delegating power and responsibility to the Executive Director and/or staff without ensuring appropriate oversight.

The duties of a group home and STRTP's board of director or governing body include those duties specified in California Code of Regulations, Title 22, Section 84063 for group homes, and Interim Licensing Standards (ILS) for STRTP, Section 87063 for STRTPs:

- ◆ Establish and approve policies and procedures governing the operation of the group home or STRTP. For an STRTP, the policies and procedures shall be kept and maintained in updated policy and procedure manuals, and the licensee shall allow the department to review the manuals upon request. The manuals shall address, at minimum, the following topics set forth in ILS Section 87063(a)(1)(A)1.-2., including but not limited to:

1. Conflict of interest, self-dealing, segregation of duties and less-than-arms-length transactions.
2. Internal controls, including, but not limited to, financial accounting, reconciliations, financial security measures, disbursements, petty cash and financial record keeping.

(Note: this does not apply to a county licensed to operate a short-term residential therapeutic program).

- ◆ Approve and monitor the corporation's operating budget;
- ◆ Assess and maintain the level of funds necessary to cover the costs of operating the group home or STRTP;
- ◆ Review and approve the facility's emergency intervention plan as specified in CCR Title 22 Section 84322(k) for group homes and ILS Section 87095.22 for STRTPs;
- ◆ Employ an administrator who meets the requirements of CCR Title 22 Section 84064 for group homes and ILS Section 87064 for STRTPs;
- ◆ Complete a written statement describing the duties delegated to the administrator. Provide a copy of this statement to the administrator and maintain a copy in the facility's file;
- ◆ Require that the Chief Executive Officer, administrator, or a designee be present at all board of director or governing body meetings during which the operation or the policies of the group home(s) or STRTP(s) are discussed;

- ◆ Conduct board of director or governing body meetings at least on a quarterly basis to review and discuss the group home or STRTP's operation and documents as specified in [HSC Section 1520.1\(f\)](#) and based upon the review, ensure that the Group Home and STRTP complies with all applicable regulations;
 - Review and discussion of a group home or an STRTP's operation shall include the incidents involving contact by law enforcement with a child residing in the facility that were reported to the department as specified in CCR Title 22 Section 84061(i) for group homes and ILS Section 87061(k) for STRTPs.
- ◆ Ensure that minutes are kept for all board of director or governing body meetings and retained as a permanent record. The minutes shall reflect the board's discussion of the documents specified in HSC Section 1520.1(f);
- ◆ Ensure that all minutes of board of director or governing body meetings are available to the licensing agency to inspect, audit, and copy upon demand during normal business hours. Minutes may be removed if necessary for copying. Removal of minutes shall be subject to the requirements specified in CCR Title 22, Section 84063 for group homes, and ILS, Section 87063 for STRTPs.
- ◆ Submit copies of all corporate documents to the licensing agency at the time documents are submitted to the Secretary of State.

Additionally, the board of directors or the governing body is ultimately responsible for the following:

- ◆ Make and approve long-range goals and objectives.

This means actively participating in strategic planning; making and authorizing the corporation's long-term direction; approving annual objectives and establishing long-range goals.

- ◆ Develop a financial plan to ensure that there are adequate funds to pay expenses and meet long-range goals and objectives.

This includes approving an annual budget and could include fundraising to supplement your program and ensuring adequate insurance plans are in place.

- ◆ Make and adopt policies for and ensure compliance with internal controls.

This means establishing the limits of the Executive Director's authority to budget, administering finances and compensation, establishing programs, and otherwise managing the corporation, all of which can be spelled out in the position's Duty Statement. Ensuring development of procedures to govern operations and ensure adequate internal controls, such as organization rules and procedures for financial accounting, reconciliation, financial security measures, disbursements, petty cash, and financial record keeping.

- ◆ Select, employ, assess and monitor performance, and if necessary, dismiss the Chief Executive Officer or Executive Director.

This means providing support, comments and criticism, when needed; holding the staff accountable for carrying out plans and policy decisions; and providing an annual formal performance review and appraisal.

- ◆ Adopt and monitor the corporation's operating budget, financial development plan and insurance program.

This means reviewing and understanding the financial statements on a regular basis to ensure the financial health of the corporation and that the corporate funds are being spent appropriately and in accordance with the board's financial plan and budget. If the results of a financial audit (sometimes called a "financial audit review") or fiscal audit is unclear, the directors and/or the governing body have an obligation to ask questions about the information contained in the audit and address any concerns. They also have an absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind pertaining to the organization and its finances.

- ◆ Perform its legal responsibilities.

To act for the corporation as outlined in the articles of incorporation, constitution and/or bylaws.

- ◆ Protect the assets of the corporation. This means:

- Ensuring that no board members, management, or staff are overpaid or unfairly or unreasonably profiting from business dealings with the corporation.
- For executive compensation, the nonprofit organization must follow the IRS guidelines for setting executive salaries that meet the reasonable and fair standard, including obtaining and using nonprofit comparability data to ensure compensation levels are similar to those paid by similarly situated organizations for a functionally comparable position. See Internal Revenue Code section 4958.
- Disclosing any conflict of interest and refrain from voting where there is a conflict.
- Ensuring the corporation's equipment is not being misused.
- Ensuring all important purchases and leases have fair and reasonable terms and represent the best deal possible to the corporation.

- ◆ Board development (recruiting, orienting and assessing the board).

Aside from attending board meetings, it is also recommended that directors take the time to get to know the group home and/or the STRTP. Conduct regular on-site facility visits. When appropriate, take the time to talk with the children and/or NMDs and staff

(in accordance with [HSC Section 1522](#)). This hands-on approach will provide valuable information about the operations of the group home or STRTP.

STANDARD OF CARE

The board and each director have a special legal relationship to the corporation called a fiduciary relationship. As fiduciaries, directors must place the interests of the corporation before their own or others' interests. To protect the corporation's interest, the board must guard against harm to the corporation caused by any unfair or unreasonable transactions, conflict of interest or self-dealing transactions. To accomplish this, the board must take an active role in overseeing the corporation.

Directors are fiduciaries of the corporations on whose board they serve and are expected to perform their service in accordance with what is known as the "Duty of Care" and the "Duty of Loyalty."

The Duty of Care

The director's duty of care means that the director must perform with the level of care than an ordinarily prudent person in a like position would use. A director should review the governing documents of the corporation, including the bylaws and articles of incorporation to understand the company's mission, along with the role of the board in ensuring that mission.

Directors need to stay informed of the operations of their corporation by regularly attending board meetings and serving on board committees. Directors need to obtain the information they need to make an informed decision. They should form their own decisions and not rely on the recommendations of others. A board member should be willing to ask difficult questions and to ensure that each matter is subject to adequate deliberation.

A board member has the right to look into the corporation's finances and can ask for access to management, advisors, auditors and others to obtain that information. A director can rely on reports made by committees appointed by the board, on officers and managers that the director thinks are reliable and competent, on counsel, independent accountants and others with professional expertise. In relying on others, the director should act in good faith and perform a reasonable inquiry where necessary.

The Duty of Loyalty

The director's duty of loyalty means that the director must act in the best interests of the corporation. This means that the director is obligated to act with undivided loyalty, which is to say that they must be fair in their dealings with the nonprofit and should not seek to use their position to benefit personally or financially from their work as a director.

The duty of loyalty is most likely to be at issue when a director enters into transactions with the corporation, in which there is the potential for the director to enrich themselves at the expense of the corporation. Whenever a director enters into a transaction with the corporation, the director should seek approval of the board, and the board needs to determine that the deal is

in fact in the best interests of the corporation. A more complete discussion of this can be found in the section of this pamphlet addressing self-dealing transactions.

COMPOSITION OF THE BOARD AND CONFLICTS OF INTEREST

While it is convenient to have employees or their relatives on the board, it is not always in the corporation's best interest because these individuals are likely "interested persons." There is a built-in conflict of interest if too many directors receive money from the corporation or if too many directors are related to employees of the corporation.

Additionally, if a director is an "interested person," that director may not participate in the vote approving the transaction in which the director has an interest. If the transaction is not fair to the corporation, a lawsuit may be filed by any director or officer of the corporation, or by the Attorney General, to recover damages incurred by the corporation. The interested director may be held liable. (Corporations Code section 5233)

"Interested persons" include any director who has received payment for services rendered within the past 12 months whether as an employee (full or part time), independent contractor, or otherwise. If a director is related to anyone by birth or marriage who has received payment from the corporation, that director may also be an "interested person" (Corporations Code Section 5227). To avoid the possibility of a director accidentally participating in a vote where the director is an interested person, interested persons should not be selected to serve on the board of directors or governing body.

There is a good reason for this rule. Directors may have to decide whether to use corporate money for their own payment (or other interests) or for the corporation's charitable purposes. By limiting the number of "interested persons" serving as directors, the corporation limits the potential for self-dealing transactions and other conflicts of interest

When a board or staff member has an interest that may affect their ability to put the interest of the corporation before their personal interest, a conflict of interest exists. Because directors (and their family and friends) are likely employed outside of the board and are associated with organizations in their communities, it is not unusual for actual or potential conflict of interest to arise.

Directors must follow specific procedures in approving transactions involving the corporation and one or more directors who have a material financial interest in the transaction, as is the case in a self-dealing transaction. ([Corporations Code Section 5233](#)).

In addition, a county licensed to operate an STRTP must have a conflict of interest mitigation plan, as set forth in Health and Safety Code (HSC) Section 1562.01(e) and Welfare and Institutions Code (WIC) Section [11462.02\(g\)](#). Welfare and Institutions Code [11462.02\(g\)](#) states in part:

(g) Counties licensed to operate a ... short-term residential therapeutic program shall,

as a condition to receiving payment, ensure that its conflict-of-interest mitigation plan, submitted to the department pursuant to ... subdivision (d) of Section 1562.01 of the Health and Safety Code, addresses, but is not limited to, the following:

- (1) A decision to place children and youth in a county-operated facility when alternative appropriate placement options exist.*
- (2) The reporting by county staff to the department or other agencies of observed noncompliant conditions or health and safety concerns in county-operated ... short-term residential therapeutic programs.*
- (3) The cross-reporting of reports received from mandatory child abuse and neglect reporters involving county-operated ... short-term residential therapeutic programs.*
- (4) Disclosures of fatalities and near fatalities of children placed in county-operated ... short-term residential therapeutic programs.*

FREQUENTLY ASKED QUESTIONS ABOUT CONFLICTS OF INTEREST

1. If I have seven board members, how many can be “interested persons”?

A maximum of three persons. The remaining four board members cannot be paid by the corporation in a non-director capacity or be related by blood or marriage to any other person paid by the corporation in a non-director capacity. However, it is not recommended to have any interested persons serve on the board for the reasons described above.

2. What can be done to prevent the board of directors from having too many “interested persons”?

The board must check for conflict whenever the board composition changes (new board members, removal of board member). In addition, at least once a year the corporation should determine if any director has received payment during the past year and if any director thinks they may receive payment for the coming year. The corporation should also determine if any director’s relative has or will receive payment for services rendered. If there are more than 49% “interested persons” serving as directors, the board must correct the situation. To balance the percentage, the board can remove or replace “interested persons” or add non-interested persons so long as the action and total number of directors is allowed by the bylaws. Board members are responsible for disclosing any potential interest/conflict on an on-going basis. However, to avoid concerns regarding conflicts of interest related to interested persons on the board, it is a best practice to not have compensated employees serve as board members. Also, it is a best practice to at least once a year require staff and board members to fill out a conflict of interest form disclosing any potential conflicts.

3. Is a director considered an “interested person” if they receive reimbursement for actual costs incurred while performing their duties as directors?

No, this is not considered payment for purposes of identifying the number of “interested persons.”

SELF-DEALING TRANSACTIONS

A “self-dealing transaction” is a conflict of interest where the corporation and a director are parties in a transaction where the director has a “material financial interest” in the transaction ([Corporations Code Section 5233](#)). Any director who has a “material financial interest” in the transaction is an “interested director” and they have a duty to disclose the interest in the transaction to the board. The interested board member cannot participate in the board vote/decision related to the self-dealing transaction.

Any financial interest is “material” if it is large enough to create an appearance of a conflict of interest. Actual conflict is not required to trigger the duty to disclose to the board; the director must honestly disclose any potential interest and let the board make a determination.

Examples of potential self-dealing transactions between a corporation and director include the renting or selling of real property (house, structure, land, etc.) including but not limited to a director using an entity such as a trust to purchase real property, and then having the trust rent that property back to the group home or STRTP; the renting or selling of personal property (furniture, appliances, office equipment, etc.); contracting for services; payment of a salary to an employee who is also a board member; and any transaction where a director may earn a commission.

Conflict of Interest/Self-Dealing Example: The board needs to approve a contract for services. One of the potential bids is from a director’s spouse, other relative, or an entity (partnership, corporation, or trust) with which the director or relative is associated. If it is not obvious that the person is or is not a relative or the entity is affiliated with the director, the board has a duty to inquire about the relationship. If it is confirmed the bid is from a relative, associate or other entity associated with the director, the board must then determine whether a self-dealing transaction exists. (Note: If in doubt as to whether a self-dealing transaction exists, it is a best practice to treat it as a self-dealing transaction or seek legal advice.) If self-dealing, the board must determine that the transaction is reasonable and fair to the corporation before approving it. All information, discussions and determinations of the board related to the decision should be recorded and kept on file.

Caution: Any group home or short-term residential therapeutic program provider with a self-dealing lease transaction for shelter costs, as defined in Section 5233 of the Corporations Code, shall not be eligible for an AFDC-FC rate. (WIC § 11462.06(d).) A “self-dealing transaction” or “conflict of interest” in a shelter care lease that is not addressed in WIC Section 11462.06 may still be subject to a disallowance under federal law (See [2 Code of Federal Regulations 200.465](#)). These types of transactions may result in an overpayment of AFDC-FC funds that the organization will be required to pay back.

Transactions involving a third party such as a director's spouse, other relative, or an entity (partnerships, corporations, or trusts) with which the director or relative is associated, may also be self-dealing situations. It may not be obvious that a director or relative is affiliated with the entity. Therefore, all possible associations must be reported by a director to the board.

Once it has been apprised of a potentially self-dealing transaction, the board must then determine whether the transaction will be allowed. The board must decide that the transaction is fair and reasonable and in the corporation's best interests in accordance with California Corporations Code section 5233(d)(2) and (3) before approving it. All information, discussions and determinations of the board related to the decision should be recorded and kept on file. When a board is apprised of a potentially self-dealing transaction, it should exercise due diligence and may want to seek legal advice. See 2 CFR 200.465, which applies to lease transactions involving a more expansive list of interested parties and any nonprofit that receives federal funds.

FREQUENTLY ASKED QUESTIONS ABOUT SELF-DEALING

1. What happens when an unfair self-dealing transaction occurs?

When a transaction unfair to the corporation occurs, the organization suffers damage to its assets. The Attorney General, and others, may sue the responsible directors for damages to the corporation, plus interest, and in some cases punitive damages. (California Corporations Code section 5233.) Self-dealing directors and other responsible directors can be removed from the board of directors or may be subject to administrative action by the Department. (Health and Safety Code sections 1500 et. seq.) An STRTP provider with a self-dealing lease transaction for shelter care is not eligible for an AFDC-FC rate. (WIC § 11462.06(d).)

2. Under what circumstances can a board approve a potentially self-dealing transaction with an interested director?

Not all transactions between a corporation and an interested director are unfair to the corporation. If the transaction benefits the corporation, it is fair and reasonable, and is the best deal the board could reasonably obtain under the circumstances, such a transaction may be allowed. Corporations Code section 5233(d) describes the circumstances under which a board may approve such a transaction. It also describes the different procedures which must be used if the transaction is to be approved by the board in advance, or after the fact. The following requirements must be met:

- ◆ The corporation entered into the transaction for its own benefit and not for the benefit of the interested director;
- ◆ The transaction was fair and reasonable to the corporation at the time the corporation entered into it;
- ◆ Prior to entering the transaction the board approved the transaction with knowledge of the director's interest and by a majority vote of the directors then in office, excluding the vote of the interested director(s).

- ◆ Before approving the transaction, the board considered alternative arrangements and in good faith found, after reasonable investigation, that a more advantageous arrangement under the circumstances from disinterested parties could not be found;

If the directors have all of the facts before them, and find all of the above to be true, they may authorize a self-dealing transaction. Before doing so, the directors must exercise due diligence in making sure the transaction is fair and reasonable to the corporation.

Failure to abide by the requirements of section 5233(d) could lead to the board and its individual members being sued for any losses sustained by the corporation, as set out in section 5233(h), and could lead to possible administrative action by the department, including revocation of the license and/or a termination of the STRTP's rate.

3. What is "Due Diligence"?

In exercising due diligence, the directors must conduct a reasonable investigation into the facts.

Due Diligence Example: Assume the corporation is considering hiring one of its directors to perform bookkeeping services. An independent person or committee should be appointed to conduct an investigation into the facts. At a minimum, the facts considered should include what bookkeeping services are required and what other bookkeepers charge for similar services. The fair market rates should then be compared to that of the "interested director." The directors must review in good faith all the information gathered by the independent investigation, and all other relevant information, and ask all necessary questions in order to make an honest and informed decision. This review and comparison will indicate to the board whether the transaction is "fair and reasonable" to the corporation.

As a practical matter, thorough and complete board minutes should be kept of any board meeting where a self-dealing transaction is reviewed and approved. All information gathered by the independent review and any written reports relied upon by the directors should be included or attached to the minutes.

The actions of the board must appear proper; the intent must be proper; and the outcome must be in the best interest of the corporation. If these actions are not performed, the transaction could project the appearance of fraud and collusion by the directors, and all directors could be held liable for damages to the corporation.

FREQUENTLY ASKED QUESTIONS ABOUT TRANSACTIONS AND COMPENSATION

1. Are loans to a director ever appropriate?

A loan made by a corporation to a director, officer, or relative of either, or a third party associated with those persons, may be improper. Directors may be held personally liable for making a loan of charitable assets. Prior approval from a court or the Attorney General

is required for most loans from a public benefit corporation to an officer or director ([CORP Section 5236](#)).

2. Are there any transactions that are always prohibited?

Certain distribution of corporate assets is prohibited, such as: (1) transfers of corporate funds or assets to directors, officers, or members without fair consideration; (2) payment of excessive or unauthorized salaries or “bonuses”, (3) Improper gifts of charitable assets to individuals; and (4) other uses of corporate assets unrelated to carrying out the charitable purposes of the corporation. A director may be personally liable for making or receiving a prohibited “distribution” of the public benefit corporation’s assets.

3. How do I know if staff compensation is fair and reasonable?

There is no precise formula to evaluate whether staff compensation is fair and reasonable. The following may be considered in such an evaluation.

- ◆ For executive compensation, the nonprofit organization must follow the IRS guidelines for setting executive salaries that meet the reasonable and fair guidelines, including obtaining and using nonprofit comparability data to ensure compensation levels are similar to those paid by similarly situated organizations for a functionally comparable position.
- ◆ Ask were there staff turn-over concerns in the facility, and if so, what level of compensation is comparable in the industry and necessary for staff retention?
- ◆ Are there other monies or things of value (such as reduced time schedule, overtime pay, benefits, bonuses, trips, gifts, or the use of a car) given to staff in addition to wages that must be considered part of compensation?
- ◆ How was the compensation determined?
- ◆ Does the compensation paid comply with the requirements of the California Labor Code and the Industrial Welfare Commission orders, i.e., minimum wage for exempt and non-exempt employees?
- ◆ What are the job duties of the staff person?
- ◆ Does the staff have any special qualifications or experience that justify a higher level of compensation?
- ◆ What do other similarly situated staff who work in similar sized nonprofit businesses earn?
- ◆ Is the compensation necessary for the facility to hire quality staff?
- ◆ What percentage of operating expenses goes to employee compensation?

INTERNAL CONTROLS

Internal controls are the rules, policies and procedures implemented by a corporation or nonprofit organization to ensure the integrity of financial and accounting information, promote accountability, and prevent fraud and the financial malfeasance that can be a cause for disciplinary action under [Health and Safety Code section 1550](#). They are an essential component in the operation of the organization and provide reasonable assurance of:

- (a) Effectiveness and efficiency of operations;*
- (b) Reliability of reporting; and*
- (c) Compliance with applicable laws and regulations.*

The elements of a solid internal control system include segregation of duties, access, authorization, reconciliation, record keeping, and reporting. Some examples of internal controls include, but are not limited to, the following:

1. Written, board or governing body-approved policies and procedures, and oversight by the licensee, board and governing body that they are followed;
2. Separate recording and identification of each source of funding (e.g., private donation, ABC contract, XYZ grant);
3. Monthly reconciliation of bank accounts by someone other than the person authorized to approve expenditures, who signs checks or authorizes electronic payments;
4. Segregation of payroll duties between the individual authorizing and the person who issues payroll;
5. Recording of cash receipts immediately, depositing daily, reconciling, and maintaining with adequate security;
6. An original receipt/invoices accompany all expenditures, no matter how small. If the original receipt/invoice may deteriorate over time (e.g. thermal print) then a copy is made and attached to original;
7. All receipts contain an adequate description to determine what was purchased, the specified business purpose and the identification of employee/purchaser in order to review for accuracy and reasonableness;
8. Pre-authorization of disbursements (via checks or electronic payment) exceeding a set dollar amount to vendors by management, and reviewed by the board/governing body;
9. Disbursements are made on pre-numbered checks, used in numerical order, with accounting for blank or void checks;
10. No disbursements made payable to "cash" or signed in advance;

11. Supporting documentation that references check numbers and marked “paid,” or otherwise canceled, to prevent reuse or duplicate payment and the original documentation is retained by the NPO;
12. Requirement of a second signature on all checks over a “significant” amount as defined in the organizations internal control policy;
13. The petty cash fund is entrusted to a single custodian, is adequately safeguarded, and each expenditure is documented as to its business purpose. It is a best practice that petty cash replenishment checks be made payable to the fund custodian rather than cash, and that replenishment checks are only be issued in the amount equal to the total case disbursements supported by receipts;
14. No person is in a position to initiate, approve, undertake and review any one transaction from beginning to end;
15. A director, governing body member, or staff person’s personal credit card is never used except where unable to write a check or pay cash using the organization’s accounts;
16. Pre-approval by the Executive Director, board/governing body is required for major credit card expenditures.

BOARD OF DIRECTORS OR GOVERNING BODY MEETINGS

Board of directors or governing body meetings must be held at least quarterly ([HSC Section 1520.1\(f\).](#)) At these meetings, the board of directors or governing body shall review and discuss licensing reports (e.g., Complaint Reports and Facility Evaluation Reports), financial and program audit reports of its group home and/or STRTP operations, incident reports filed by the facility with Community Care Licensing, and any administrative action against the licensee or its employees. Based on its review, the board or governing body must ensure that the facility complies with all applicable regulations.

It is acceptable to designate a committee to review and provide a complete report to the full board. However, each director or governing body member remains responsible to exercise a duty of care and due diligence in their actions.

Any discussions involving specific children and/or NMDs living in the group home and/or STRTP or specific employees must be kept confidential. Their names should not appear in the minutes. The minutes shall reflect the board or governing body’s discussion of these documents and the facility’s operation. The board of directors or governing body shall require that the Chief Executive Officer, administrator, or a designee be present at all meetings during which the operation or the policies of the group home or STRTP are discussed.

FREQUENTLY ASKED QUESTIONS ABOUT BOARD OR GOVERNING BODY MEETINGS

1. Where can board of directors or governing body meetings be held?

Board of directors or governing body meetings can be held anywhere stated in the notice, bylaws or board resolution. If the meeting place is not stated in any of these ways, then it must be held at the principal office of the corporation.

2. How many votes are required for a decision of the board to be official?

In order for any act or decision of the board of directors or governing body to be official, it must be voted on by a quorum. A quorum is the number of members necessary to take action at a meeting ([Corporations Code Section 5211](#)). The quorum may be stated in the articles of incorporation or bylaws and must meet the legal rules.

Normally a quorum will be found where a majority of the authorized number of directors is present. The bylaws may allow for a smaller number, but in no event can the number be less than one-fifth of the authorized number of directors, or two, whichever is larger.

3. Must we keep minutes of our board or governing body meetings?

Yes, a nonprofit corporation must keep a written record of the meetings of its board and committees of the board ([Corporations Code Section 6320](#)).

Minutes must be retained as a permanent record and shall reflect the discussion of specified documents and the facility's operation.

In addition, the minutes of the board or governing body meetings must be made available to California Department of Social Services staff upon request ([HSC Section 1520.1\(f\)](#)). The minutes should contain enough information to make a clear written record for future use. Group Homes and STRTPs must ensure that minutes are kept for all board or governing body meetings and retained as a permanent record. Group Homes and STRTPs must ensure that all minutes of meetings are available to the licensing agency to inspect, audit, and copy upon demand during normal business hours, as specified (CCR Title 22 Section 84063 for group homes; STRTP ILS Section 87063 for STRTPs).

The primary purpose for keeping minutes is to have documentation that explains the actions of the board or governing body. Although minutes need not be a word-for-word record of everything said at a board meeting, they must present an accurate record of what was done, such as time, place, who was present, what was discussed, results of all votes taken, and what decisions were made and why. Also, any documents the board, governing body or committee uses to make decisions (including financial statements) should be attached to the minutes if they are not confidential. If these documents are confidential, they must be clearly identified in the minutes. However, if the documents are usually a part of the corporation's permanent records, they must either be attached to the minutes or clearly identified in the minutes.

4. How can the board meet its duty to review reports on operation or financial reports, etc., at the meetings?

- ◆ Attach the reports to the agenda, if feasible, or summarize reports.
- ◆ Reflect discussion in the minutes.
- ◆ Designate an individual or committee that researches and evaluates in detail, and reports to the board.
- ◆ Obtain training on evaluating and understanding financial statements.

5. Must we keep minutes of committee meetings?

Yes, if the committee is acting on behalf of the board of directors or governing body, such as an executive committee.

6. Who can take the minutes?

Usually the Secretary of the corporation is responsible for preparing the minutes and distributes them either in advance of the next board meeting or at the meeting. A vote to approve the minutes is required only when board members want to make changes to the minutes as presented by the Secretary. Lastly, the minutes should be certified by the Secretary ([Corporations Code Section 5215](#)).

OFFICERS

California nonprofit corporations must have at least three officers: a President or Chair of the board, a Secretary, and a Treasurer or Chief Financial Officer ([Corporations Code Section 5213](#)). Officers are in charge of carrying out the day-to-day business of the corporation. Chief Executive Officers and Chief Financial Officers may serve as paid staff and may or may not have a seat on the board of directors. The powers, duties and responsibilities of corporate officers are set by the articles of incorporation, bylaws, or by resolution of the board of directors.

Officers owe a fiduciary duty to the corporation and must act honestly and in the best interest of the corporation. Officers serve at the pleasure of the board, and may be terminated by vote of the board, subject to the rights, if any, of an officer under an employment contract.

Note that one person may fill one or more of the officer positions. However, the person or persons who hold(s) the offices of Secretary and Treasurer cannot also be President.

BOARD OF DIRECTORS OR GOVERNING BODY BEST PRACTICE GUIDELINES

The responsibilities of the board of directors or governing body of a non-profit corporation are fairly well defined. What can be unclear is how board members are to meet their responsibilities. The following are a few suggestions to have an effective board of directors or governing body that practices good governance and oversight of the agency.

Boards of directors or governing bodies vary in size and are responsible for governing agencies that serve children and/or NMDs with a variety of needs. This requires flexibility in how boards or governing bodies are structured and how they fulfill their responsibilities. The following answers to frequently asked questions summarize some good business practices for a board of directors or governing body.

FREQUENTLY ASKED QUESTIONS RELATED TO BEST PRACTICES

1. What orientation methods can be used to familiarize potential and new members with the board or governing body and the agency?
 - ◆ Develop a board or governing body manual of materials that includes the following items: introduction letter, mission statement, description of program(s), bylaws, list of board members, list of board committees, board calendar, last meeting minutes, and the most current audit reports. (Refer to the list at the end of this section for other suggested information.)
 - ◆ Interview current members of the board or governing body.
 - ◆ Tour the agency.
 - ◆ Visit and talk to staff and children and/or NMDs, as appropriate.*
2. What are some strategies for creating and keeping a strong board or governing body?
 - ◆ Recruit persons with the experience and education the board/governing body needs (e.g., accountant and mental health professional).
 - ◆ Orient and train new and existing board or governing body members.
 - ◆ Assess how well the board or governing body and the individual members are meeting the needs of the corporation.
 - ◆ Stagger board or governing body members' terms to bring fresh ideas and skills while maintaining consistency.

3. What are some strategies for effective, productive board or governing body meetings and involved board or governing body members?

- ◆ Provide notification of meeting and agenda items in advance to all members and require a response from each indicating whether they will attend.
- ◆ Identify issues and recommendations of major agenda items.
- ◆ Designate a timekeeper, if needed, to keep the meeting on track, particularly with controversial agenda items.
- ◆ Follow rules to maintain an orderly meeting, (e.g., Robert's Rules of Order.)
- ◆ Establish committees among board or governing body members to deal with personnel issues, nominations for board members, and other ongoing functions.
- ◆ Have board retreats or annual meetings to develop a strategic plan for the agency (should invite agency staff members).
- ◆ Invite board or governing body members to agency functions.
- ◆ Solicit input from "silent" members.
- ◆ Have breaks during the meeting.
- ◆ Provide refreshments, breakfast, or lunch.

4. How can the board or governing body meet its duty to review licensing reports, financial reports, and incident reports at the meetings?

The board or governing body is responsible for finding ways to address problems identified in licensing reports, audit reports, incident reports and administrative actions. The law requires the board or governing body to meet quarterly to discuss these documents. The board or governing body can meet these obligations by, among other things:

- ◆ Placing these reports on the agenda and attaching the reports to the agenda, if feasible, or summarizing lengthy incident reports. (Information including, but not limited to, information and records regarding a minor client, is confidential and must be protected consistent with applicable laws.)
- ◆ Recording the outcome of discussions on these reports in the minutes.
- ◆ Designating an individual or committee that reports to the board or governing body on these matters.
- ◆ Obtaining training on evaluating and understanding financial statements.

5. How can the board or governing body ensure that the agency follows CDSS regulations?

- ◆ Invite representatives of the Department for updates at board or governing body meetings.
- ◆ Review program and fiscal audits reports.
- ◆ Visit the facility; talk to staff and children and/or NMDs, as appropriate.*
- ◆ Obtain current copies of the program statement and applicable CDSS rules, regulations, and ILS.
- ◆ Attend CDSS sponsored orientations, trainings, or seminars.

* Note: Board or governing body members may be required to obtain criminal background clearance or exemption prior to their initial presence in the facility, as specified in Health and Safety Code Section 1522, subdivision (b), paragraph (1). (See also California Code of Regulations, Sections 80019 and 80019.1 for group homes and STRTPs, and ILS for STRTP, Section 87019.)

6. How important is documentation?

The board or governing body must ensure all records for expenditures are clear, concise, maintained separately from other program operations, well-organized, and easily accessible. The organization can ensure this by:

- ◆ Having written policies and procedures in place.
- ◆ Ensuring the written policies and procedures are accurate, up to date, and followed consistently.
- ◆ Making sure all expenditures are documented and making sure the program purpose is identified for each transaction.
- ◆ Developing an organized system for documentation and storage of records.
- ◆ Maintaining detailed Minutes for every meeting and capturing all decisions – minor and major.
- ◆ Following the law, Articles, Bylaws and written policies and procedures for board/governing body and staff decisions.

7. What other practices should board or governing body members consider?

- ◆ Evaluate the Executive Director annually or more often as necessary.
- ◆ Attend meetings regularly and record attendance or absence, include reasons for absence.

- ◆ Obtain Director's and Officer's insurance.
- ◆ Obtain and review the [Attorney General's Guide for Charities](#)
- ◆ Be familiar with the organization's articles of incorporation and bylaws.
- ◆ Require dual signatures, when feasible, on all bank accounts.
- ◆ Ensure objections to board or governing body decisions are reflected in the minutes.
- ◆ Have professional members and community representatives on the Board or governing body to contribute their knowledge and experience.
- ◆ Attend workshops and conferences for non-profit corporations.

One of the best methods to be an effective and responsible board or governing body member is to keep informed about the organization in order to make knowledgeable decisions. The list below contains suggested items to include in a board or governing body manual.

- ◆ List of current board or governing body members' telephone numbers, addresses, and their committee assignments.
- ◆ Board or governing body calendar with important dates.
- ◆ List of current agency staff and their responsibilities or Duty Statements.
- ◆ Organizational chart.
- ◆ Agency bylaws.
- ◆ Recent financial audits/financial reviews, fiscal audit, balance sheet, operating statement, and other financial statements.
- ◆ Recent reports to funding sources, and a list of all funding sources.
- ◆ Minutes of recent Board or governing body meetings.
- ◆ Update on current programs and projects.
- ◆ Application and Supporting Documentation Checklist LIC 281E for STRTPs
- ◆ Plan of Operation and Program statement LIC 9106A for STRTP
- ◆ Program Statement LIC 9106 for Group Homes
- ◆ Guidebook for providers (Establishing and Maintaining Positive Relationships in the Community)

- ◆ Staff personnel policies manual.
- ◆ Accounting procedures manual.

OVERVIEW OF COMMUNITY CARE LICENSING AND LICENSING REQUIREMENTS

The Community Care Licensing Division (CCLD) is the division of the CDSS responsible for licensing and monitoring all group homes and short-term residential therapeutic programs (STRTP). These responsibilities are accomplished by on-site inspections to the group homes and/or STRTPs performed by licensing staff from regional offices located throughout California. The purpose of these inspections is to ensure that group homes and/or STRTPs follow the applicable statutes, regulations and standards contained in the California Community Care Facilities Act (Health and Safety Code (HSC), commencing with section 1500), California Code of Regulations (CCR), Title 22, Division 6, Chapter 1 and Chapter 5, including Subchapter 1, Subchapter 2, and Subchapter 3, and ILS Chapter 7.5, including Subchapter 1, Subchapter 2, and Subchapter 3. It is the responsibility of the members of the board or governing body to be familiar with these statutes, regulations and ILS. Knowledge of the rules will be important when making decisions about the operations of the group home and/or STRTP.

To obtain a copy of the regulations and/or ILS:

- ◆ Ask your administrator for a copy of the regulations and/or ILS that should be kept in each facility;
- ◆ Access the regulations, ILS, and the Health and Safety Code from the California Department of Social Services' website at: <https://www.cdss.ca.gov/>. Regulations may also be accessed on Westlaw at: <https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations>
- ◆ Obtain copies of the regulations and/or the Health and Safety Code by contacting:

Thomas Reuters
(651) 687-7000
<https://legal.thomsonreuters.com/en>

This section of the Facts You Need to Know Group Home and/or STRTP Board of Directors booklet provides a general overview of CCLD and members of the board or governing body's responsibilities. This overview does not explain every statute, regulation, and ILS that may apply to these facilities. However, the following information gives a general idea of the required basic services to be provided by a group home and/or STRTP and the resources available through CCLD to assist with compliance.

FREQUENTLY ASKED QUESTIONS ABOUT COMMUNITY CARE LICENSING

1. Who is Community Care Licensing?

Community Care Licensing is a division of the California Department of Social Services (CDSS). The mission of CCLD is to promote the health, safety, and quality of life of each person in community care through the administration of an effective collaborative regulatory enforcement system. Licensing staff throughout the state are responsible for processing applications for licensure, performing licensing inspections, responding to complaints that licensing statutes, regulations or ILS are being violated, developing plans to correct problems and violations, and helping group homes and STRTPs follow licensing requirements.

2. How does the licensing agency monitor compliance?

The licensing agency makes at least one unannounced inspection to all group homes and/or STRTPs at least once every two years. (HSC Section 1534.) During the inspection, all records pertaining to staff, children and/or NMDs and administrative requirements are reviewed. Based on a review of the group home's and/or STRTP's program statement and plan of operation, staff and children and/or NMDs are interviewed to ensure the program described is in place and services are being provided.

All buildings, grounds, equipment and furnishings are reviewed to ensure that they are clean, safe, sanitary, sufficient in quantity, and in good repair. In addition, the following are reviewed for facility compliance:

Emergency plans; discipline policies; activity programs; visiting policies; neighbor and child complaint policies; personnel policies; job descriptions; resident roster; medication records; board of directors or governing body meeting notes; staff training plan; resident accounting records; interviews with staff, children and/or NMDs; Needs and Services Plans; and staff criminal record clearances. At the conclusion of the inspection, licensing staff prepare a written report, which is discussed with the appropriate facility staff persons. If any areas do not meet requirements a notice of deficiency is issued citing the statute, regulation or ILS that has been violated and a manner and time for correction is agreed upon. A follow-up plan of correction inspection may be conducted to ensure that all deficiencies have been corrected unless the Licensing Program Analyst and facility staff agree upon another means for clearing the deficiency.

In addition, the licensing agency makes an unannounced inspection when it receives a complaint against a facility alleging violations of the applicable statutes, regulations, or ILS. (HSC Section 1538.) The complaint visit occurs within 10 calendar days after receipt of a complaint. During a complaint investigation the Licensing Program Analyst may conduct an inspection of the buildings and grounds, review staff and client records, and conduct interviews with staff, among other things. At the end of the investigation, licensing staff prepares a written report. Violations are identified along with the relevant statutes, regulations, and/or ILS, which are discussed with the appropriate facility staff persons. A manner and time for correction are agreed upon, if applicable. A follow-up plan

of correction visit may be conducted to ensure that violations have been corrected unless the Licensing Program Analyst and facility staff agree upon another means for clearing the deficiency.

Facility staff should forward copies of written Inspection and Complaint reports discussed above to the board or governing body for its review. This notification will assist the board or governing body in its general supervision of the facility's operations for which the board or governing body is accountable.

3. What can happen if a licensee violates licensing requirements?

When a licensee has violated a statute, regulation, and/or ILS or engaged in activities that endanger the health and safety of children and/or NMDs in their care, the Department can take action against the licensee (HSC Section 1500 et. seq., CCR, Title 22, Chapter 1 and Chapter 5, ILS for STRTPs, Chapter 7.5). The Department's enforcement options may include, but are not limited to, those listed below.

- ◆ Civil Penalty – The licensing agency can levy different types of civil penalties against a licensee for failure to comply with licensing requirements. For example, at the time of the follow-up inspection, the licensing agency can levy a civil penalty against a licensee when areas that do not meet requirements are not corrected within the time specified in the plan of correction agreed to by the licensee. In addition, the licensing agency can levy civil penalties for certain violations, such as repeat violations and serious violations, as specified in applicable law. The licensee has a right to request a formal review of a civil penalty assessed, as set forth in applicable law. The licensing agency may levy a penalty against a facility in the amounts specified in [HSC Section 1548](#).
- ◆ License Revocation – The Department may revoke a license for any of the following:
 - Violation of, or aiding, abetting or permitting the violation of, the Community Care Facilities Act or of the associated rules and regulations.
 - Conduct which is inimical to the health, morals, welfare, or safety of either the people of this state or an individual in, or receiving services from, the facility.
 - The conviction of a licensee or other specified persons of specified crimes.
 - The licensee or person providing direct care or supervision or other specified person knowingly allows any child to have illegal drugs or alcohol.
 - Engaging in acts of financial malfeasance concerning the operation of the facility including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

The licensee has a right to request a hearing before an Administrative Law Judge. (HSC Section 1550 et. seq.).

- ◆ Temporary Suspension Order (TSO) – The Director may temporarily suspend any license prior to any hearing when, in the opinion of the Director, the action is urgent to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The licensee has a right to request a hearing on the TSO before an Administrative Law Judge. (HSC Section 1550.5.)
- ◆ Exclusions – The Department may prohibit any person from employment or presence in any licensed facility, certified family home or resource family home; and may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee, based on specified grounds. The excluded person has a right to appeal. (HSC Section 1558 et. seq.)

4. Does CCL provide technical assistance to licensees?

CCL has a specialized non-enforcement unit within the division called the Technical Support Program (TSP). TSP provides free, individualized on-site facility consultation to provide the licensee and facility staff with information to prevent licensing violations. TSP serves as a partner to the Children's Residential Program in promoting the health, safety, and quality of life of each person in community care through addressing specific licensees' need for technical assistance.

Licensing Program Analysts (LPAs) can also issue Advisory Notes to provide technical assistance.

5. How does the corporation become a group home or STRTP licensee?

The board of directors or governing body sends a designee and administrator to attend an orientation and participate in the application process. This same designee should be the individual who will act on behalf of the corporation during the licensing process. A completed application (which includes the plan of operation/program statement) is submitted and reviewed for compliance by the local regional office staff.

Among other items, a fire clearance approval is obtained from the local fire department, other local approvals that may be required are received, corporate assets are confirmed, and criminal record clearances are completed. Before a provisional license to operate is issued to the corporation, the licensing staff make a site inspection of the facility, and ensure all clearances are received and all documents have been reviewed for compliance. A corporation may apply for more than one license. For information on the application process for a group home and for an STRTP, please visit the [CDSS website's Information Resources](#).

Additional information for STRTP applicants: Prior to submission of the STRTP application, a completed program statement should be submitted to the county placing agency and other counties the applicant currently works with or anticipates working with in order to secure a letter of recommendation in support of their program from a county placing agency. A completed application (which includes the plan of operation/program statement and letter of recommendation from a county placing agency) is submitted and

reviewed for compliance by the Department. The letter of recommendation shall meet all requirements of ILS Section 87018.

In addition, an STRTP shall obtain national accreditation from an entity identified by the department within two years of obtaining provisional licensure as set forth in HSC Section 1562.01(b) and ILS Section 87089. This accreditation shall be maintained during the facility's licensure.

The STRTP shall obtain a mental health program approval from the California Department of Health Care Services, or from a delegated county Mental Health plan, within 12 months of obtaining provisional licensure as set forth in HSC Section 1562.01(c). If after 12 months of operation, the department determines that the STRTP is in substantial compliance with licensing standards but has not yet obtained mental health program approval the department may extend the provisional license for up to an additional 12 months in order for the STRTP to complete the mental health program approval as set forth in HSC Section 1520.1(a) and ILS Section 87089.1. This approval shall be maintained in good standing during the facility's licensure.

6. When can the facility begin operating?

It is against the law for a group home and/or STRTP to begin operation without a license. Each facility operated by the corporation must have a license issued before the facility is allowed to begin operation.

In addition, a rate application must be submitted to the Foster Care Rates and Outcomes Bureau to assign a rate before the STRTP can receive funding for foster children in placement.

Commencing January 1, 2017, no new group home rate or change to an existing rate shall be established pursuant to the Rate Classification Level (RCL) system.

7. What are the staffing requirements?

A facility manager shall be at the facility at all times when one or more children and/or nonminor dependents (NMD) are present ([HSC Section 1522.4](#)). Regulations and ILS specify the minimum number of direct care staff based on the number of children in the facilities and whether the facility serves children under six years of age and/or minor parents.

Regulations and ILS address staff qualifications including, but not limited to, those related to minimum age, education/experience, clearances, and certifications. The qualifications and the associated responsibilities differ based on whether the individual is a direct care, social work, administrative, volunteer, or support staff. In addition, all staff must receive training compatible with the program and the children and/or NMDs served as set forth in applicable statutes, regulations and/or ILS. If a child requires special care and supervision because of age, behavior or other factors, the number of on-duty direct care staff shall be increased. (CCR, Title 22, Sections 84064, 84064.1, 84064.2, 84064.3, 84065, 84065.1, 84065.2, 84065.5, 84065.6, 84065.7, 84067, 84265, 84265.1, 84265.5, 84265.7, 84277,

84278; ILS for STRTP, Sections 87064, 87064.2, 87064.3, 87065, 87065.1, 87065.2, 87065.5, 87096.65, 87096.651, 87096.652, 87096.655, 87096.77, 87096.78, 87097.65, 87097.651, 87097.652, 87097.655, 87097.78.)

8. What are some of the services that are provided to children and/or NMDs in STRTPs?

The services offered by an STRTP include, but are not limited to, the following:

- ◆ Core services including, but not limited to, mental health services, as specified, that are trauma informed, culturally relevant, age and developmentally appropriate, to stabilize and transition children and/or NMDs in a timely manner to a home-based family setting (STRTP ILS Section 87078.1);
- ◆ Services which provide trauma-informed care and utilize trauma-informed practices (ILS Section 87078.2);
- ◆ Services identified in the child/NMD's Needs and Services Plan that are to be provided or arranged to meet the needs and goals of the child/NMD as assessed by the Qualified Individual pursuant to Welfare and Institutions Code (WIC) Sections 4096 and 11462.01 (STRTP ILS Sections 87068.2(c), 87068.22(c));
- ◆ Nursing services available 24 hours a day, 7 days a week, as set forth in HSC Section 1562.01(n) and ILS Section 87089.2;
- ◆ Medi-Cal specialty mental health services certified by the County Mental Health Plan, and directly delivered or arranged for;
- ◆ Services as written in the licensee's program statement and approved by the licensing agency, including participation in Child and Family Team meetings;
- ◆ Direct care and supervision;
- ◆ Transportation;
- ◆ Health-related services;
- ◆ Assistance with handling cash resource (allowances, employment wages, etc.);
- ◆ Culturally relevant personal hygiene items (i.e. soap, toothbrush, toothpaste, feminine hygiene items, shaving gear, shampoo, brushes, combs, etc.);¹
- ◆ After care services as set forth in the child/NMD's individualized family-based after care support plan (HSC Section 1562.01(d)(2)(C)(vii)(I)(ib); ILS Section 87022.1(b) (12)

All services must be culturally relevant and trauma informed and must demonstrate the capacity to meet the treatment needs of children and/or NMDs. The needs and services plan for the child must be updated every 30 days including, but not limited to, determining

the child's need for continuing services as set forth in ILS Section 87068.3. The needs and services plan for the NMD must be updated every 30 days as set forth in ILS Section 87068.22(e).

9. What are some of the services that are provided to children and/or NMDs in group homes?

Group home programs offer a variety of services as outlined in the facility's program statement. The services offered by a group home include, but are not limited to, the following:

- ◆ Services as written in the licensee's program statement and approved by the licensing agency;
- ◆ Services which provide trauma-informed care and utilize trauma-informed practices;
- ◆ Direct care and supervision;
- ◆ Transportation;
- ◆ Health-related services;
- ◆ Assistance with handling cash resource (allowances, employment wages, etc.);
- ◆ Culturally relevant personal hygiene items (i.e. soap, toothbrush, toothpaste, feminine hygiene items, shaving gear, shampoo, brushes, combs, etc.);

10. As a board or governing body member, am I responsible for the facility's day-to-day operation?

The board or governing body may delegate the day-to-day operations of the corporation to a person, such as an executive director, or to a management company, provided that the activities and affairs of the corporation are exercised under the ultimate direction of the board or governing body. The board or governing body is accountable for the general oversight of the facility, the establishment of policies and procedures concerning its operation, and ensuring that there are adequate internal controls, and that finances are appropriately managed.

In addition, as noted above, the board or governing body is responsible for finding ways to address problems identified in licensing reports, audit reports, incident reports and administrative actions. The law requires the board or governing body to meet quarterly to discuss these documents ([HSC Section 1520.1\(f\)](#)).

11. As a member of the board or governing body, how am I responsible for ensuring accountability?

As a member of the board of directors or governing body, you must be active in ensuring accountability, and shall perform the duties as specified in California Code of Regulations, Title 22, Division 6, Section 84063 for group homes, and ILS for STRTP Section 87063.

For example, as a member of the board of directors or governing body, you are ultimately responsible for oversight and ensuring that the licensee has a robust system of internal controls, as discussed above and as required by statutes, regulations and ILS.

12. Where can I get copies of licensing evaluation reports?

You can get a copy of any licensing report from either the Administrator of your facility, from the local licensing office, or public reports from the Department's Transparency website at: <https://www.cdss.ca.gov/inforesources/community-care-licensing/facility-search-welcome>

13. What happens if we have to move to another location or we want to add another facility?

The group home and/ or STRTP licenses are not transferable either to a new licensee or to a different/additional location. Therefore, when a move or expansion is being considered, please be sure to coordinate with the appropriate Regional Office.

If you are adding another facility, and it is an STRTP, you must submit an application that includes a letter of recommendation in support of your program from a county placing agency. The letter of recommendation must comply with all requirements in ILS Section 87018. A new letter of recommendation is not required if an STRTP moves locations.

In addition, you need to submit a rate application to the Foster Care Rates and Outcomes Bureau in order to receive the STRTP rate for the new or expanded facility.

OVERVIEW OF THE FISCAL AND PERFORMANCE AUDITS BUREAU AND FOSTER CARE RATES AND OUTCOMES BUREAU IN THE SYSTEM OF CARE BRANCH

The System of Care Branch (SOC) is part of the CDSS Children and Family Services Division and took over the duties of the former Foster Care Audits and Rates Branch (FCARB). Some of the fundamental responsibilities of SOC include establishing, authorizing and overseeing Aid to Families with Dependent Children–Foster Care (AFDC-FC) funding for STRTPs, foster family agencies (FFAs), Transitional Housing Placement programs for nonminor dependents (THP-NMDs), and other eligible programs; providing consultations and trainings to foster care providers, counties, and other departmental staff; developing data queries and statistical reports; and providing fiscal oversight for providers. The SOC includes the Foster Care Rates and Outcomes Bureau (FCROB) and the Fiscal and Performance Audits Bureau (FPAB). FCROB has primary responsibility to establish and oversee program rates on an initial, annual, and program change basis. FPAB's responsibilities include conducting fiscal and performance audits, overseeing the results of an audit and the provider's corrective actions, and assessing and collecting overpayments from providers. Foster Care Audits and Rates Regulations are found in the Department's Manual of Policies and Procedures, Division 11, including Sections 11-400, 11-402, 11-404, 11-405, and 11-430. If you wish to obtain your own copy of the regulations, you may access them on the Department's website at: <https://cdss.ca.gov/inforesources/letters-regulations/legislation-and-regulations/foster-care-regulations/fc-rates-regulations>

For information on how to prepare for a fiscal audit of a program, please refer to Foster Care Audits and Rates Letter (FCARL) No. 2012-01 for an introduction to the Fiscal Audit Protocols. Additional details regarding the Fiscal Audit Protocols can also be found on FCARL 2015-01, which includes a copy of the Audit Guide for AFDC-FC Funded Non-Profit Organizations (NPO). All FCARLs can be found on the Department's website at: <https://cdss.ca.gov/inforesources/foster-care-audits-and-rates/letters>

FREQUENTLY ASKED QUESTIONS ABOUT AUDITS AND RATES

1. How does an STRTP receive a rate?

Reference: [WIC 11462](#); [HSC 1562.01](#)

To obtain an STRTP rate, a complete rate application must be submitted to SOC FCROB for each STRTP program in operation. A complete rate application is one that contains all the required documents necessary to set the rate, which includes but is not limited to: a program statement; evidence of attending CCL provider orientation; a letter of recommendation from either the host or placing county, and completion of administrator certification training. To review the complete list of the required rate application documents, please refer to the [CDSS Foster Care Rate Setting webpage](#).

2. What causes an STRTP rate to be terminated?

Reference: [WIC 4096.5](#), [11462](#), [11462.01](#), [11466.01](#) and [11466.36](#)

The STRTP rate is conditioned upon, including, but not limited to, the following: maintaining CCL licensure and nonprofit status, mental health program approval and Medi-Cal mental health certification, accreditation, and timely submission of your Financial Audit Report (FAR). Suspension or loss of any of these requirements, core services, specialized and intensive treatment supports, or staff training, means an STRTP rate may be subject to reduction, revocation, or termination.

An STRTP must be reclassified and paid at the appropriate program rate for which it is qualified if it fails to maintain the level of care and services necessary to meet the needs of children and nonminor dependents in care, fails to maintain the required mental health treatment program, fails to timely obtain or maintain accreditation as required by state law, or fails to provide proof of accreditation upon request by the CDSS.

3. How does a Licensed Group Home receive a rate?

Reference: [WIC 11462.04](#)

It cannot. Effective December 31, 2020, licensed group homes are no longer eligible for an AFDC-FC rate for foster care placements.

4. How does SOC monitor Compliance?

References: WIC sections: [11466.2](#) and [11466.21](#); MPP sections: [11-402](#), [11-405](#); [Title 2, Code of Federal Regulations \(CFR\), Part 200](#)

Welfare and Institutions Code (WIC) Section [11466.21](#) and the [CDSS Manual of Policies and Procedures \(MPP\)](#) section 11-405.21, provide as a condition to receive a STRTP rate, a provider must submit a Financial Audit Report (FAR) and cost data that meet all of the requirements in MPP section 11-405.21, which include a requirement that the FAR be prepared by a certified public accountant (CPA) or a state-licensed public accountant.

In addition, all foster care providers, including STRTPs, are subject to a fiscal audit. The purpose of a fiscal audit is to evaluate the financial condition of an organization that receives AFDC-FC funds to provide foster care services to children in out-of-home care.

The audit team will review the provider's general ledger and select expenditures to be reviewed/tested in order to determine:

- ◆ whether AFDC-FC funds were spent on allowable and reasonable costs;
- ◆ that the expenditures have the appropriate documentation; and
- ◆ whether the organization complied with all applicable federal and state laws pertaining to the program operation.

The audit team will also verify that the organization has written policies and procedures for effective internal controls that will safeguard AFDC-FC funds received and ensure that the AFDC-FC funds are used in the manner intended and for the benefit of children placed in its care. Lastly, the fiscal audit will determine if the organization's board of directors or governing body, as fiduciaries of the corporation, is taking an active role in overseeing the organization by placing the interests of the organization before all other interests; protecting the organization against harm caused by any unfair or unreasonable transactions, conflicts of interest or self-dealing transactions; and ensuring compliance with all applicable state and federal laws and regulations related to the program operations.

Finally, pursuant to, [Assembly Bill 403](#) (Ch. 773, Stat. 2016) and [Assembly Bill 2083](#) (Ch. 815, Stat. 2018), SOC, in collaboration with CCL and Department of Health Care Services, will be implementing a performance audit to measure the performance of STRTPs providing core services to determine the extent to which the desired results or benefits established by the CCR legislation are being achieved, the effectiveness of the STRTP's programs, activities, or functions, and whether the STRTP has complied with laws and regulations applicable to the program.

5. What role does the board of directors or governing body play in an audit?

References: [California Code of Regulations, Title 22, Section 84063](#) for group homes, and [Interim Licensing Standards \(ILS\) for STRTP](#), Section 87063, [MPP 11-402](#)

When a fiscal audit occurs, members of the board or governing body are expected to participate. Participation may include taking part in an interview with the assigned auditor, assisting with providing necessary information and documentation requested by the Department, and taking part in the STRTP's response to any audit findings, including repayment for disallowed costs and implementation of corrective action.

6. What happens when a fiscal audit results in findings of disallowed costs, lack of oversight, or lack of internal controls?

References: [MPP 11-405.1](#), [11-405.23](#), [11-430](#)

When a fiscal audit occurs, the members of the board or governing body are expected to participate and the STRTP must provide all requested records. At the end of the audit, SOC will issue a Management Decision Letter explaining the findings. If a fiscal audit results in findings of disallowed costs, lack of internal controls, or insufficient board of directors or governing body oversight, then the provider will be required to repay the disallowed costs and provide proof of corrective action taken to implement recommendations resulting from the audit. Some audit findings may result in a member of the board or governing body or employee being held personally liable to repay the disallowed costs. Providers will have due process to appeal the audit findings.

7. What are some of the most common findings in a fiscal audit?

The following are some of the most common findings in a fiscal audit. This list is not all-inclusive and should NOT be relied upon as an authoritative guide. It is the provider's responsibility to be knowledgeable of and follow all laws and regulations relating to the use of AFDC-FC funds. Please note: any findings related to disallowed costs and internal control issues will also result in a board of directors' or governing body's oversight finding.

Failure to maintain adequate supporting documentation: [Title 2, Code of Federal Regulations \(CFR\), Part 200, Subpart E – Cost Principles, section 200.403](#), states in part that for a cost to be allowable under Federal awards, it must (a) be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles; (g) Be adequately documented.

If the provider cannot provide adequate supporting documentation to show the reasonableness and programmatic purpose of its expenditures, including but not limited to, original invoices, original cash register receipts, canceled checks, contracts and account statements, the expenditures will be disallowed.

Interest Payments: [Title 2, CFR, Part 200, Subpart E – Cost Principles, section 200.449](#) states, in part, costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented are unallowable.

The provider can choose to use alternative sources of funding to pay the costs related to interest and must be able to provide adequate documentation that alternative funds were used.

Interest costs incurred on borrowed capital for financing costs to acquire, construct, or replace capital assets, subject to certain conditions, are allowable provided that adequate documentation and approvals are maintained.

Less than arm's length leases/contracts: The “less-than-arms-length” lease/contract is one under which one party to the lease/contractual agreement is able to control or substantially influence the actions of the other. This type of lease/contract occurs when the nonprofit organization enters into a lease/contractual agreement with a party that is able to control or substantially influence the organization. This includes board members, other key members of the organization, and any family members as specified/defined in the regulations. This kind of lease is allowable only up to the amount that it would cost had the NPO held title to the property since the date the property was purchased. In order to calculate the allowable monthly lease, the auditors will consider expenses such as depreciation, maintenance, taxes, and insurance as if the organization had ownership of the property since it was originally purchased by the lessor. In order to consider these additional costs, the provider/lessor will need to show fiscal auditors appropriate supporting documentation. (Please refer to [Title 2, Code of Federal Regulations \(CFR\), Part 200, Subpart E – Cost Principles, section 200.465](#) for more information).

Self-Dealing Transactions: An AFDC-FC rate will be denied or is subject to termination if there have been self-dealing transactions. [California Corporations Code \(CCC\) section 5233](#) defines “self-dealing transaction” as a “transaction to which the corporation is a party and in which one or more of its directors has a material financial interest....” Pursuant to [WIC section 11462.06\(d\)](#), “any group home or short-term residential therapeutic provider with a self-dealing transaction for shelter costs, as defined in section 5233 of the Corporations Code, shall not be eligible for an AFDC-FC rate.”

No Written/Inadequate Internal Control Policies and Procedures: Title 2, CFR, Part 200, Subpart E – Cost Principles, section 200.303 addresses the importance of internal controls and requires that the provider “establish and maintain effective internal controls” in order to ensure that the management and expenditure of a federal award is consistent with state and federal law and any award-specific requirements.

A provider, through its Board, must establish clear, written guidelines for effective internal controls that will safeguard AFDC-FC funds received; and ensure that the AFDC-FC funds are used in the manner intended, and for the benefit of children placed in its care.

Failure to Provide Oversight by the Board of Directors or Governing Body: Since the board of directors or governing body acts as the trustee of the NPO's assets, and are responsible for ensuring that the NPO remains fiscally sound. Any questioned costs and/or deviance from the established written policies, or lack thereof, results in an insufficient Board Oversight finding.

In general, the board of directors or governing body is responsible for establishing the policies of the NPO, providing oversight of the overall program operations, and ensuring that all transactions entered into are in the best interests of the NPO. They are expected to actively participate in and approve the NPO's long term goals and directions, monitor the NPO's budget and major purchases, protect the NPO's assets, and comply with all

applicable federal, state and local laws and regulations. More specific and additional duties are based on the specific role/position taken as a member of the board of directors or governing body. See [CCC sections 5210-5260](#) for Board of Director or governing body duties.

8. Are there any guidelines or limits to compensation? What type of documentation must be maintained to support compensation in case of an audit?

It is up to the organization and its board of directors or governing body to set reasonable compensation for its staff, including its executive staff. Compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved. Consideration is given to the size and income of the NPO, funding of the program, and assets; and whether or not the compensation for its executive staff is reasonable in comparison to similarly situated providers. NPOs can look to the reasonableness standards and criteria for executive compensation contained in [Internal Revenue Code section 4958](#) or it may use another outside reliable source to determine what reasonable compensation is.

Providers should refer to [Title 2, CFR, Part 200, Subpart E – Cost Principles, section 200.430\(a\)\(3\)](#) and [200.430\(i\)](#) for more information regarding Standards for Documentation of Personnel Expenses. Furthermore, consideration should also be given to Title 2, CFR, Subpart E – Cost Principles, section [200.430\(c\)](#), Professional activities outside the non-Federal entity, particularly when it comes to the standards for executive compensation.

9. Where are the regulations pertaining to fiscal audits located?

Fiscal audits are conducted in accordance with the following regulations:

- ◆ CDSS Manual of Policies and Procedures (MPP) sections [11-402.31](#); [11-403](#), [11-404](#), and [11-405](#). (NOTE: The MPPs are in the process of being updated)
- ◆ [Title 2, Code of Federal Regulations \(CFR\), Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, Welfare and Institution Code \(WIC\) section 11466](#)
- ◆ [California Corporations Code Sections 5210-5260](#)

10. What is the purpose of the independent financial audit?

A financial audit is a state and federal requirement for group homes and STRTPs. An independent audit by a CPA or state-licensed public accountant provides credibility to the information reported by management through objectively acquiring and evaluating information. The financial audit contributes to accountability because it provides independent reports by a CPA or state-licensed public accountant on:

- ◆ The accounting and internal control systems
- ◆ The accuracy and fairness of financial information as presented in financial statements, and
- ◆ The compliance with laws and regulations

11. Does SOC provide technical assistance?

Yes, the SOC FCROB and FPAB are committed to providing STRTP providers, including members of the board or governing body, with technical assistance regarding the rate application process or preparing for an audit, respectively.

APPENDIX

The California Legislature has enacted many statutes that apply to group home and STRTP providers and nonprofit corporations. This appendix includes some of these statutes, regulations, and ILS addressed in this booklet. This appendix is **not** an exhaustive treatment of the subject.

CALIFORNIA CORPORATIONS CODE
NONPROFIT PUBLIC BENEFIT CORPORATIONS
CORPORATIONS CODE Sections 5110-6910

ORGANIZATION AND BYLAWS

1.	Formation	5120-5122.5
2.	Articles of Incorporation	5130-5134
3.	Amendment of Articles of Incorporation	5810-5820
4.	Powers	5140-5142
5.	Bylaws	5150-5153
6.	Location and Inspection of Articles and Bylaws	5160

DIRECTORS AND MANAGEMENT

1.	General Provisions	5047, 5210-5215
2.	Composition, Selection, Removal and Resignation of Directors . . .	5220-5227, 5520-5527
3.	Standards of Conduct of Directors	5230-5239
4.	Duties and Liabilities of Directors	5230-5232

5. Self-dealing Transactions by Directors5233, 5234
6. Compensation of Directors5235

MEETINGS AND VOTING

1. General Provisions5211, 5510-5517
2. Additional Provisions Relating to Election of Directors5520-5527
3. Quorum.5211
4. Voting of Memberships5610-5617
5. Board Meeting Minutes.6320

COMMUNITY CARE LICENSING LAWS, REGULATIONS AND ILS

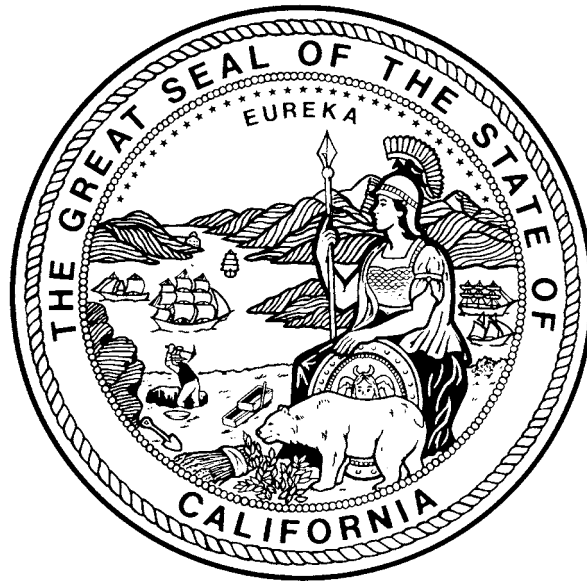
1. Health and Safety Code Sections 1500 et seq.
2. California Code of Regulations, Title 22, Division 6, Chapters 1 and 5, including Subchapter 1, Subchapter 2, and Subchapter 3
3. Interim Licensing Standards for STRTPs, Chapter 7.5, including Subchapter 1, Subchapter 2, and Subchapter 3

FOSTER CARE AUDIT AND RATE- SETTING LAWS AND REGULATIONS

Welfare and Institutions Code Sections 4096, 11462, 11462.01, 11462.02, 11462.04, 11462.06, 11466, 11466.2, 11462.21, 11466.36,

California Department of Social Services, Manual of Policies and Procedures Division 11, Sections 11-400, 11-402, 11-404, 11- 405, and 11-430.

FEDERAL FINANCIAL, FISCAL AND INTERNAL CONTROL REQUIREMENTS, 2 CFR, PART 200



STATE OF CALIFORNIA

CALIFORNIA HEALTH & HUMAN SERVICES AGENCY

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES