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| TITLE 26 | HEALTH AND HUMAN SERVICES |
| PART 1 | HEALTH AND HUMAN SERVICES COMMISSION |
| CHAPTER 745 | LICENSING |
| SUBCHAPTER B | CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE |

§745.43. What are the requirements for a relative-only listed family home?

The permit holder for a relative-only listed family home must:

- (1) Operate within the limits of its permit;
- (2) Ensure there is no immediate risk to the health or safety of a child while in care;
- (3) Ensure any medication given to a child in care is administered according to Texas Human Resources Code §42.065;
- (4) Request background checks as required in Subchapter F of this chapter (relating to Background Checks);
- (5) Ensure that each child is free from abuse, neglect, and exploitation while in care;
- (6) Pay all required fees as outlined in Subchapter E of this chapter (relating to Fees); and
- (7) Comply with all other applicable laws and rules.

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SUBCHAPTER I NON-ENFORCEMENT VOLUNTARY ACTIONS
DIVISION 1 OVERVIEW OF VOLUNTARY ACTIONS

§745.5001. What are the different types of voluntary actions that an operation may take?

(a) A voluntary action under this subchapter is not an enforcement action.

(b) The following chart lists the voluntary actions that are available for all operation types:

Figure: 26 TAC §745.5001(b)

| Voluntary Actions | Description of Voluntary Action |
|-------------------------------|--|
| (1) Withdrawal of Application | <p>(A) You withdraw your application before we decide whether to issue or deny you a permit.</p> <p>(B) If you withdraw your application, you may reapply for a permit later, unless you are ineligible to reapply because we have taken an enforcement action as provided in §745.5003 of this division (relating to How does my taking a voluntary action affect Licensing's ability to impose an enforcement action against my operation?).</p> |
| (2) Temporary Relocation | You relocate your operation for a period of up to 90 days due to renovation or damage to the operation that makes it temporarily unsuitable for child care. After 90 days you must request that Licensing amend the permit with a new address. |
| (3) Voluntary Suspension | <p>You request to suspend your permit for a:</p> <p>(A) Specific reason in §745.5151 of this subchapter (relating to For what reasons may I request a voluntary suspension of my permit?); and</p> <p>(B) Specific period, up to a maximum of two years.</p> |
| (4) Voluntary Closure | You choose to close your operation after we have issued you a permit. |

§745.5003. How does my taking a voluntary action affect Licensing's ability to impose an enforcement action against my operation?

(a) We may impose an enforcement action against your operation:

(1) Even if you have taken a voluntary action; and

(2) Any time while the voluntary action is in effect.

(b) If your action is voluntary suspension or voluntary closure, we may also impose the enforcement action:

(1) When you reopen your operation after your voluntary suspension ends; or

(2) If you apply for another permit after your voluntary closure; for example, if your operation met the requirements for probation when you voluntarily closed your operation, we may include a condition on your new permit that your operation is on probation.

(c) We may also determine that an enforcement action is unnecessary because of your voluntary action.

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SUBCHAPTER I NON-ENFORCEMENT VOLUNTARY ACTIONS
DIVISION 2 NOTICE AND APPROVAL

§745.5051. What notice and approval are required for a voluntary action?

The following chart notes whether notice to and approval by Licensing are required before an operation may take the voluntary action:

Figure: 26 TAC §745.5051

| Voluntary Actions | Notice to Licensing | Approval by Licensing |
|-------------------------------|---|---|
| (1) Withdrawal of application | (A) Written notice is required; otherwise, we will continue to process the application and deny or issue the permit. | (B) Not required. |
| (2) Temporary relocation | (A)(i) Written notice is required as soon as possible, but no later than 24 hours after the operation temporarily moves or begins providing care at any location not noted on the operation's permit. (A)(ii) For a residential child care operation, notice can be through a report to the Statewide Intake Division of the Texas Department of Family and Protective Services. | (B) Licensing must inspect and approve the new location before or as soon as possible after the operation relocates. |
| (3) Voluntary suspension | (A) A written request is required as noted in §745.5153 of this subchapter (relating to How do I request a voluntary suspension?). | (B) Licensing must inspect and approve the permitted location before the operation may reopen after the voluntary suspension. |
| (4) Voluntary closure | (A) Written notice is required as noted in §745.5201(b) and (c) of this | (B) Not required. |

| | | |
|----------------------|---|--------------------------|
| Voluntary Actions | Notice to Licensing | Approval by Licensing |
| | subchapter (relating to How do I voluntarily close my operation?). | |

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SUBCHAPTER I NON-ENFORCEMENT VOLUNTARY ACTIONS
DIVISION 3 TEMPORARY RELOCATION

§745.5101. What must I do when I temporarily relocate my operation because of a renovation or damage that makes the operation temporarily unsuitable for child care?

You must:

(1) Complete the notice requirements in §745.5051 of this subchapter (relating to What notice and approval is required for a voluntary action?);

(2) Prior to a planned temporary relocation:

(A) Obtain any inspections at the temporary location that are identified in the applicable minimum standards, which may include fire, sanitation, and gas leak inspections;

(B) Ensure the temporary location complies with applicable licensing statutes, rules, and minimum standards;

(C) Allow us to conduct an inspection under §745.5103 of this division (relating to What actions will Licensing take after receiving a notice that you are temporarily relocating?); and

(D) Obtain our approval for any aspect of the temporary location that does not comply with the applicable licensing statutes, rules, and minimum standards; and

(3) For an emergency relocation:

(A) Complete each step in paragraph (1) of this section as soon as possible after the relocation; and

(B) If you are a residential child care operation, meet any additional reporting and documentation requirements under:

(i) §748.303(e)(1) and (3) of this title (relating to When must I report and document a serious incident?); or

(ii) §749.503(e)(1) and (3) of this title (relating to When must I report and document a serious incident?).

§745.5103. What actions will Licensing take after receiving a notice that you are temporarily relocating?

(a) We will conduct an inspection before or as soon as possible after the relocation to determine whether the temporary location complies with the applicable licensing statutes, rules, and minimum standards.

(b) We will consider the following when deciding whether to approve a temporary location that does not comply with minimum standards:

(1) The anticipated length of stay at the temporary location;

(2) The degree of deviation from minimum standards; and

(3) Whether there is a risk to children considering the activities and services that the operation offers.

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DIVISION 4 VOLUNTARY SUSPENSION

§745.5151. For what reasons may I request a voluntary suspension of my permit?

You may request a voluntary suspension of your permit because you are unable to operate for a specific time period for the following reasons:

(1) You are repairing or making changes to your operation;

(2) You do not have children in care or enrollment is too low for you to operate;
or

(3) You are unable to operate due to:

(A) Illness;

(B) An extended absence;

(C) A staffing shortage;

(D) Personal reasons; or

(E) A declared disaster.

§745.5153. How do I request a voluntary suspension?

You must submit a written request for a voluntary suspension to your Licensing representative. In your request, you must include:

(1) The reason that you are requesting a voluntary suspension from §745.5151 of this division (relating to For what reasons may I request a voluntary suspension of my permit?);

(2) The proposed dates for the suspension to begin and end;

(3) Plans to resume operating; and

(4) A statement about how you will meet the applicable licensing statutes, rules, and minimum standards at the end of the suspension period.

§745.5155. What actions may Licensing take after receiving written notice that you are requesting a voluntary suspension?

After we receive your written request for a voluntary suspension, we may approve, deny, or add conditions to your request to voluntarily suspend your permit based on the following factors:

(1) Whether an enforcement action is currently pending or we are considering imposing an enforcement action against your operation;

(2) Whether we can confirm that you do not plan to care for children during the voluntary suspension period;

(3) The length of the time you plan to suspend your permit; and

(4) Whether your request meets one of the reasons of §745.5151 of this division (relating to For what reasons may I request a voluntary suspension?).

§745.5157. What are my responsibilities during the voluntary suspension period?

(a) As soon as possible, but no later than 24 hours after we notify you of our approval, you must notify the parents of any children attending or enrolled in your operation of the voluntary suspension, including the dates of the voluntary suspension period.

(b) During the voluntary suspension period, you must:

(1) Not have children in care;

(2) Notify us at least 15 days before resuming operation, as required by §745.5159 of this division (relating to What must occur before I may reopen and begin operating at the end of the voluntary suspension period?);

(3) Return the permit to us during the suspension period;

(4) Meet the permit renewal requirements in Subchapter D, Division 12 of this chapter (relating to Permit Renewal), if applicable, so your permit does not expire while under voluntary suspension; and

(5) Remit all fees due during the suspension period.

§745.5159. What must occur before I may reopen and begin operating at the end of the voluntary suspension period?

(a) You must notify us in writing at least 15 days before you plan to begin operating.

(b) We will conduct an inspection within 15 days to determine whether you are meeting all applicable licensing statutes, rules, and minimum standards.

(c) After the inspection, we will determine whether to give you permission to reopen and operate.

(d) You may reopen only if we give you permission to operate after conducting the inspection.

§745.5161. What if I do not begin operating at the end of the voluntary suspension period?

If you have not met the requirements of §745.5159 of this division (relating to What must occur before I may reopen and begin operating at the end of the voluntary suspension period?) and do not begin operating at the end of the voluntary suspension period:

(1) You may request an extension if your voluntary suspension was for less than two years;

(2) You may voluntarily close your operation; or

(3) We may take an enforcement action, including revoking your permit.

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 DIVISION 5 VOLUNTARY CLOSURE

§745.5201. How do I voluntarily close my operation?

(a) You must notify the parents of any children that you are voluntarily closing your operation as provided in this chart:

Figure: 26 TAC §745.5201(a)

| If you are: | You must provide notification: |
|---|--|
| (1) Voluntarily closing due to an emergency, | (A) Immediately to the parents of any children attending your operation when you close; and (B) As soon as possible, but no later than the 24 hours after closing, to the parents of other children enrolled in your operation. |
| (2) Voluntarily closing, but not due to an emergency, | As soon as possible, but no later than 24 hours after you determine you will be voluntarily closing, to the parents of any children attending or enrolled in your operation. |

(b) When you voluntarily close your operation, you must:

(1) Notify us as soon as possible, but no later than 10 days after you close your operation; and

(2) Surrender your permit. If you want to operate again after you voluntarily close your operation, you will have to apply for a new permit.

(c) Residential child care operations that are closing in response to a disaster or an emergency must meet the reporting and documentation requirements of §748.303(e)(2) of this title (relating to When must I report and document a serious incident?), and §749.503(e)(2) of this title (relating to When must I report and document a serious incident?), including making a report to us and the parents as soon as possible, but no later than 24 hours after the incident.

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SUBCHAPTER K INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY
DIVISION 1 OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

§745.8401. Who may inspect or investigate an operation under this division?

(a) An authorized representative of Licensing may inspect or investigate:

(1) An operation that is subject to regulation under Texas Human Resources Code (HRC) Chapter 42 to:

(A) Monitor the operation's compliance with licensing statutes, rules, and minimum standards; and

(B) Investigate an allegation of non-compliance with licensing statutes, rules, and minimum standards; and

(2) An unlicensed program providing care to children to determine whether the program is subject to regulation by Licensing.

(b) An authorized representative of the Texas Department of Family and Protective Services (DFPS) may investigate an operation that is subject to regulation under HRC Chapter 42 to investigate an allegation of child abuse, neglect, or exploitation as described in Title 40, Part 19, Chapter 707, Subchapter C, Child Care Investigations.

(c) An authorized representative of Licensing may inspect under subsection (a) of this section during or after a DFPS investigation under subsection (b) of this section.

§745.8403. What actions may Licensing take during an inspection or investigation?

During an inspection or investigation, we may take actions that reduce the risk to children and protect the health, safety, and well-being of children in care, including:

(1) Evaluating whether the operation is subject to regulation;

(2) Conducting a walkthrough of the operation;

(3) Verifying compliance with licensing statutes, rules, and minimum standards;

(4) Assessing the risk to children in the operation;

(5) Assisting the operation with identifying problems contributing to deficiencies in licensing statutes, rules, and minimum standards;

(6) Offering technical assistance;

(7) Gathering information; and

(8) Making a fair, accurate, and impartial decision regarding your compliance with licensing statutes, rules, and minimum standards.

§745.8405. When does Licensing inspect or investigate an operation or program?

(a) The following chart describes when we inspect or investigate an operation:

Figure: 26 TAC §745.8405(a)

| Type of Operation | Inspection | Investigation |
|--|---|---|
| (1) Listed Family Home, excluding Relative-Only Listed Family Homes (see paragraph (2) of this subsection) | <p>We may inspect as part of an investigation.</p> <p>Note: We do not inspect prior to the issuance of a listing, nor do we conduct routine inspections in a listed family home.</p> | We investigate when we have received a report of a deficiency in a licensing statute, rule, or minimum standard. |
| (2) Relative-Only Listed Family Home, which only provides care to children related to the primary caregiver and receives a federal subsidy from the Texas Workforce Commission | <p>We may inspect as part of an investigation.</p> <p>Note: We do not inspect prior to the issuance of a listing, nor do we conduct routine inspections in a relative-only listed family home.</p> | We investigate when we have received a report of a deficiency under §745.43(1) – (4) of this chapter (relating to What are the requirements for a relative-only listed family home?). |
| (3) Registered Child-Care Home | <ul style="list-style-type: none">• We inspect prior to the issuance of the registration;• We inspect at least once every two years after issuance of the registration, or at least once every year if the home is receiving a subsidy for a child in care through the Texas Workforce Commission; and | We investigate when we have received a report of a deficiency in a licensing statute, rule, or minimum standard. |

| Type of Operation | Inspection | Investigation |
|-------------------------------------|--|--|
| | <ul style="list-style-type: none"> • We may inspect as part of an investigation. | |
| (4) Licensed or Certified Operation | <ul style="list-style-type: none"> • We inspect prior to the issuance of the license or certification; • We inspect at least once every year; and • We may inspect as part of an investigation. | We investigate when we have received a report of a deficiency in a licensing statute, rule, or minimum standard. |
| (5) Foster Home | <ul style="list-style-type: none"> • We will periodically inspect a random sample of foster homes; and • We may inspect as part of an investigation. | <ul style="list-style-type: none"> • We investigate when we have received a report of: <ul style="list-style-type: none"> ◦ A serious incident pertaining to a child under six years of age; ◦ A deficiency in a licensing statute, rule, or minimum standard that is weighted high in a home where a foster child under six years of age is placed; ◦ Any deficiency in a licensing statute, rule, or minimum standard when law enforcement responds to or has previously responded to a family violence call at the foster home; and ◦ A deficiency involving agency staff; and • We may investigate other reports of a deficiency in a licensing statute, rule, or minimum standard or assign them to the agency to investigate. |
| (6) Adoptive Home | We may inspect as part of an investigation. | <ul style="list-style-type: none"> • We investigate when we have received a report of a |

| Type of Operation | Inspection | Investigation |
|-------------------------------------|--|---|
| | | deficiency involving agency staff; and • We may investigate other reports of a deficiency in a licensing statute, rule, or minimum standard or assign them to the agency to investigate. |
| (7) Small Employer-Based Child Care | • We inspect prior to the issuance of the compliance certificate; and • We may inspect as part of an investigation. | We investigate when we have received a report of a deficiency in a licensing statute or rule. |
| (8) Shelter Care | • We inspect prior to the issuance of the compliance certificate; and • We may inspect as part of an investigation. | We investigate when we have received a report of deficiency in a licensing statute, rule, or minimum standard. |

(b) We may inspect or investigate your operation or program during its hours of operation.

(c) If you operate a child-placing agency main office or branch office that is not open between 8:00 a.m. and 5:00 p.m., Monday through Friday, you must ensure that the office and employees are available upon our request for the purpose of inspecting or investigating your agency.

§745.8407. How often may Licensing inspect or investigate my operation?

We may inspect or investigate your operation as often as is necessary to verify compliance with licensing statutes, rules, and minimum standards or to complete an investigation.

§745.8409. Are inspections and investigations announced or unannounced?

(a) One inspection every year must be unannounced for a:

(1) Licensed operation;

(2) Certified operation; and

(3) Registered child-care home that is receiving a subsidy for a child in care through the Texas Workforce Commission (TWC).

(b) One inspection every two years must be unannounced for a registered child-care home that is not receiving a subsidy for a child in care through TWC.

(c) All other inspections and investigations may be announced or unannounced.

§745.8411. What are my responsibilities when Licensing or the Texas Department of Family and Protective Services inspects or investigates my operation?

(a) You must ensure that no one at your operation interferes with an inspection or investigation by Licensing or an investigation by the Department of Family and Protective Services (DFPS).

(b) You must ensure your operation:

(1) Admits the Licensing or DFPS representatives to the operation;

(2) Provides access to all areas of the operation;

(3) Provides access to all records; and

(4) Does not delay or prevent the Licensing or DFPS representatives from conducting an inspection or investigation.

(c) If anyone at your operation refuses to admit, refuses access, or prevents or delays a Licensing or DFPS representative from visiting, inspecting, or investigating the operation, Licensing may take any or all of the following actions:

(1) Issue the operation a deficiency;

(2) Impose an enforcement action as specified in Subchapter L of this chapter (relating to Enforcement Actions); or

(3) Seek a court order granting Licensing access to the operation and records maintained by the operation.

§745.8413. What can Licensing inspect or investigate?

(a) We may inspect and investigate any part of your operation that could affect the health, safety, or well-being of children. This includes access to:

(1) All records of the operation, including child records, personnel records, and any audio or visual records;

(2) Any area of the building, home, or grounds where your operation is located; and

(3) Any equipment the operation uses when providing care.

(b) We may interview anyone who may have information relevant to an inspection or investigation when we are at an operation during the inspection or investigation, including:

(1) A child;

(2) An employee; or

(3) Any other person.

(c) Regarding our access to records of the operation during an inspection or investigation, we:

(1) Determine what records that we need to review; and

(2) May make or take copies of any records from the operation.

§745.8415. How does Licensing investigate an anonymous report?

(a) If an anonymous report contains an allegation that the health or safety of children is at risk, we will investigate the report and any alleged deficiencies.

(b) If an anonymous report does not contain an allegation that the health or safety of children is at risk, we will evaluate the anonymous report to determine whether any alleged deficiency has a factual basis.

(c) To evaluate the anonymous report, we:

(1) Check the operation's compliance history for similar allegations or deficiencies; and

(2) Contact the operation and collaterals.

(d) If we find a factual basis for at least one alleged deficiency, we will investigate the anonymous report.

(e) If we do not find a factual basis for any of the alleged deficiencies, we will administratively close the anonymous report.

§745.8417. What will Licensing post on its Search Texas Child Care website about findings from the investigation of an anonymous report?

After investigating an anonymous report:

(1) We will not post a record of the report on the Search Texas Child Care website if we do not find a factual basis for any of the alleged deficiencies in the report;

(2) We will post a record of the report and the findings on the Search Texas Child Care website if:

(A) We determine the operation had any deficiencies; and

(B) The operation waives its right to an administrative review for any deficiency, or any deficiency is upheld in the administrative review process.

(3) We will post any additional deficiency on the Search Texas Child Care website that:

(A) We observed during an inspection related to the investigation; and

(B) The operation waives its right to an administrative review for the deficiency, or the deficiency is upheld after the administrative review process.

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| DIVISION 2 | NOTIFICATION |

§745.8441. When will we notify the operation of the purpose of an unannounced inspection or investigation?

(a) For an announced or unannounced inspection, we will notify the person in charge of the operation of the purpose of the inspection at the time of the inspection.

(b) For an investigation regarding a statute, rule, or minimum standard deficiency, we will notify the person in charge of the operation of the nature of the allegation made in the report when we first contact the operation, except as provided in subsection (c) of this section.

(c) When we first contact an operation, we do not have to notify the person in charge of the operation of the nature of the allegation made in the report if:

(1) The allegation is against the person in charge, designee, administrator, director, or primary caregiver; or

(2) We have a reason to believe that disclosing the nature of the allegation may compromise the investigation.

(d) If we did not notify the person in charge of the nature of the allegation as explained in subsection (c) of this section, then we will notify the person in charge, designee, administrator, director, or primary caregiver for the operation as soon as possible after we determine that doing so will not compromise the investigation.

§745.8443. Whom will Licensing notify of the outcome of an inspection or investigation?

(a) Once an inspection or investigation is complete, we will notify the operation of the outcome of the inspection or investigation by providing a completed inspection form or notification letter to the:

(1) Designee, director, administrator, or primary caregiver; and

(2) Person in charge, if the designee, director, administrator, or primary caregiver is not available during the exit interview.

(b) We will also notify the reporter of the outcome of an investigation, unless:

(1) There is a reasonable likelihood that notifying the reporter will jeopardize the reporter's safety; or

(2) The reporter is anonymous.

§745.8445. What will the notification of the outcome of the inspection or investigation include?

(a) The notification of the outcome of the inspection or investigation sent to the operation will include:

(1) Any licensing statutes, rules, or minimum standards that we investigated and whether the operation was in compliance;

(2) The specifics of any deficiency that we found during an investigation or inspection;

(3) The date by which you must comply with a particular licensing statute, rule, or minimum standard; and

(4) Your right to an administrative review to dispute any deficiency that we found.

(b) The notification of the outcome of the investigation we send to the reporter will include:

(1) Whether we found any deficiencies during the investigation; and

(2) A reference to the Search Texas Child Care website.

§745.8447. What must I do if Licensing notifies me of a deficiency?

(a) You must:

(1) Correct the deficiency within the timeframe that we specified, unless we approve an extension as provided in subsections (c) and (d) of this section; and

(2) Meet all licensing statutes, rules, and minimum standards.

(b) You may dispute the deficiency by requesting an administrative review; see Title 26, Chapter 745, Subchapter M, Division 1 (relating to Administrative Reviews).

(c) We may extend the timeframe we specified to correct a cited deficiency if you send us a written request that:

(1) Includes a reason for an extension, and we determine that:

(A) There is cause for the extension; and

(B) Extending the time frame would not pose an immediate danger to children in care; or

(2) States you have requested an administrative review of the deficiency, and we determine that extending the timeframe would not pose an immediate danger to children in care.

(d) If you request an extension, we will notify you:

(1) Whether we approve or deny your request for an extension to the compliance date; and

(2) If we approve your request, what the new compliance date is.

(e) If we approve your request for an extension, you must correct the deficiency within the new timeframe we specified or request a new extension.

§745.8449. Who provides notices related to investigations of child abuse, neglect, and exploitation?

(a) The Texas Department of Family and Protective Services (DFPS) provides notifications regarding child abuse, neglect, and exploitation investigations, as provided in Title 40, Part 19, Chapter 707, Subchapter C, Division 3 (relating to Notification), including:

(1) Notification to Licensing of the investigation findings, any evidence gathered regarding possible minimum standard deficiencies, and any safety plan implemented; and

(2) For an investigation in a residential child care operation, notification to the residential child care operation of the investigation findings and the name of the person alleged or designated as a perpetrator of child abuse, neglect, or exploitation.

(b) Licensing will notify you of any statute, rule, or minimum standard deficiencies within 10 days after receiving the results from a DFPS child abuse, neglect, or exploitation investigation.

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| DIVISION 3 | CONFIDENTIAL RECORDS |

§745.8481. What types of child care records does Licensing maintain?

(a) We maintain a record for each:

(1) Operation that applies for a permit;

(2) Regulated operation (a regulated operation's record was previously known as the operation's monitoring file);

(3) Program or operation that we investigate as a possible unregulated operation;

(4) Exemption determination that we make under §745.131 of this chapter (relating to How does a person or entity request that Licensing determine whether a program is exempt?) and any information that we gather to make such a determination; and

(5) Individual who applies for an administrator's license.

(b) Each record consists of one of the following or a combination of both:

(1) Electronic records maintained in the Child Care Licensing Automated Support System (CLASS), including information related to inspections and investigations that we conduct; and

(2) A hard copy or any digital files of information that is not included in CLASS, such as:

(A) Pictures;

(B) Applications;

(C) Forms with signatures;

(D) Correspondence from an applicant, permit holder, or others involved in the regulatory process; and

(E) Other supporting documentation.

(c) Records that we maintain are subject to retention periods that may affect the availability of a record that a person may request.

§745.8483. What portions of a child care record are confidential?

We can provide most portions of a child care record to the public. However, the following lists the portions of a child care record that are confidential and will not be released to the public in any manner, unless noted as an exception in §745.8487 of this division (relating to Are there any exceptions that allow the portions of a child care record that are confidential to be released to the public or certain persons?):

(1) Information concerning an open investigation, including:

(A) Interviews with operation staff, foster parents or other caregivers, children, or any other person; and

(B) Internal discussions by or among Licensing staff;

(2) The name of the reporter and any information that identifies the reporter;

(3) Information received or obtained from another agency, entity, or person, if that information is confidential under law, including information related to background checks as explained further in Subchapter F of this title (relating to Background Checks);

(4) Any private information that is confidential under state or federal law, including:

(A) A person's social security number;

(B) A foster home screening, adoptive home screening, and post-placement adoptive report; and

(C) Any information pertaining to pending court cases where the state is a party;

(5) Any information that would interfere with an ongoing law enforcement investigation or prosecution or with a Texas Department of Family and Protective Services child abuse, neglect, or exploitation investigation;

(6) The location of a family violence shelter or a victims of trafficking shelter center as defined by Texas Government Code §552.138;

(7) Information pertaining to an individual who received services at a family violence shelter or a victims of trafficking shelter center;

(8) Any photograph, audio or visual recording, or documentation of a child; and

(9) Any other information that is confidential under state or federal law.

§745.8485. Can an operation record the inspection or investigation process?

(a) In order to preserve the integrity and confidentiality of the Licensing inspection and investigation process, an operation or any person acting on the operation's behalf may not make a visual or audio recording, listen to, or eavesdrop on any:

(1) Licensing interview with operation staff, foster parents or other caregivers, children, or any other person; or

(2) Internal discussion by or among Licensing staff.

(b) This section does not prohibit an individual from recording a Licensing interview with the individual.

§745.8487. Are there any exceptions that allow the portions of a child care record that are confidential to be released to the public or certain persons?

Notwithstanding §745.8483 of this division (relating to What portions of a child care record are confidential?), the below exceptions allow certain portions of a child care record that are confidential to be released in the following manner:

(1) Information obtained during an open investigation that was confidential under §745.8483(1) of this division is no longer confidential under that provision after the investigation is completed.

(2) Information obtained during an open investigation that is otherwise confidential under §745.8483(1) of this division may be released to an operation if Licensing determines it is necessary to protect the health, safety, or well-being of a child and the release is compliant with applicable state and federal law including the federal Child Abuse Prevention and Treatment Act.

(3) A foster home screening, adoptive home screening, and post-placement adoptive report is confidential under §745.8483(4)(B) of this division, but the screening or report may be released to:

(A) The individual who is the subject of the screening or report; or

(B) Any other person, if the Associate Commissioner for Child Care Regulation or designee determines the release of the screening or report is necessary to protect the health or safety of a child.

(4) The location of a family violence shelter or a victims of trafficking shelter center is confidential under §745.8483(6) of this division, except for when the location of the shelter or center must be provided in a public hearing under Texas Human Resources Code §42.0461 because the shelter or center is a general residential operation that will provide services to children with emotional disorders. The operation does not have to identify that the operation intends to provide services to victims of human trafficking.

(5) Any photograph, audio or visual recording, or documentation of a child is confidential under §745.8483(8) of this division, unless it is releasable under §745.8491 of this division (relating to Who can review or have a copy of a photograph, audio or visual recording, or documentation of a child that is in our records?).

§745.8489. Who may get a copy of the portions of a child care record that are confidential?

(a) Notwithstanding §745.8483 of this division (relating to What portions of a child care record are confidential?), we may provide a copy of the portions of a child care record that are confidential to the following persons and entities in the relevant situations:

(1) Texas Health and Human Services Commission (HHSC) staff, including volunteers, as necessary to perform their assigned duties;

(2) Texas Department of Family and Protective Services (DFPS) staff, including volunteers, as necessary to perform their assigned duties;

(3) A single source continuum contractor (SSCC) that contracts with DFPS to provide community-based care in Texas Family Code, Subchapter B-1, Chapter 264, as necessary for the SSCC's staff, including volunteers, to perform the SSCC's duties under that subchapter;

(4) Law enforcement personnel for the purpose of investigating a crime that is related to the record;

(5) An administrative law judge or judge of a competent jurisdiction in a civil or criminal case arising out of a related inspection, investigation, or enforcement action; and

(6) Any other person authorized by state or federal law to have a copy.

(b) Notwithstanding subsection (a) of this section, Licensing, in consultation with the HHSC Legal Services Division, may withhold any information in its records if the release of that information would endanger the life or safety of any individual.

(c) Notwithstanding §745.8483 of this division, a judge of a competent jurisdiction may order us to disclose otherwise confidential information if:

(1) A party in a matter before the judge files a motion requesting the judge to compel us to disclose the information and provides notice to HHSC and any other interested parties;

(2) After conducting a hearing and reviewing the information, including an audio or visual recording, the judge determines that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual; and

(3) The judge includes in the disclosure order any safeguards that the court finds appropriate.

(d) Any person or entity that receives a copy of the portions of a child care record that are confidential under this section:

(1) May only use the confidential information for the purpose or duty that authorized the release of the confidential information; and

(2) May not release the confidential information to any person or entity that is not authorized to have the confidential information under this section.

§745.8491. Who can review or have a copy of a photograph, audio or visual recording, or documentation of a child that is in our records?

(a) In addition to the persons and entities identified in §745.8489 of this division (relating to Who may get a copy of the portions of a child care record that are confidential?):

(1) The parent of the child may get a copy of a photograph, audio or visual recording, or documentation of the child that is in our records; and

(2) The following persons may review a photograph, audio or visual recording, or documentation of a child in our records, but may not have a copy:

(A) Attorney ad litem, guardian ad litem, or court appointed special advocate of a child; and

(B) The operation cited for a deficiency from the inspection or investigation during which the photograph was taken or the audio or visual recording, or documentation was made.

(b) Any person or operation that receives a copy of a photograph, recording, or documentation of a child under subsection (a)(2) of this section:

(1) May only use it for the purpose or duty that authorized the release of the photograph, recording, or documentation of a child; and

(2) May not release it to any person or entity that is not authorized to have the photograph, recording, or documentation of a child under this section.

§745.8493. Will Licensing release any information related to a child abuse, neglect, or exploitation investigation conducted by the Texas Department of Family and Protective Services (DFPS)?

(a) DFPS investigations of child abuse, neglect, or exploitation remain confidential after DFPS provides the information to Licensing as described in Texas Human Resources Code §40.042(f).

(b) A person must request information related to an investigation conducted by DFPS from DFPS.

(c) We may release information related to a DFPS investigation in our records to:

(1) An operation to support a licensing statute, rule, or minimum standard deficiency that we assessed against the operation, so long as we redact any confidential information;

(2) An operation if Licensing determines that the operation needs the information to protect the health, safety, or well-being of a child, and the release is compliant with state and federal law including the federal Child Abuse Prevention and Treatment Act; or

(3) Any other person or entity authorized by state or federal law to have a copy.

(d) Any operation, person, or entity that receives information related to a DFPS child abuse, neglect, or exploitation investigation under this section:

(1) May only use the DFPS investigation information for the purpose or duty that authorized the release of the information; and

(2) May not release the DFPS investigation information to any other person or entity that is not authorized to have the information under this section.

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| TITLE 26 | HEALTH AND HUMAN SERVICES |
| PART 1 | HEALTH AND HUMAN SERVICES COMMISSION |
| CHAPTER 745 | LICENSING |
| SUBCHAPTER K | INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY |
| DIVISION 4 | TECHNICAL ASSISTANCE |

§745.8581. What is technical assistance?

(a) Technical assistance is additional information or clarification we provide to help you understand and comply with licensing statutes, rules, and minimum standards.

(b) Technical assistance is not a deficiency or an enforcement action. Our provision of technical assistance does not affect our ability to issue a deficiency or take an enforcement action.

§745.8583. When does Licensing provide technical assistance?

We may provide technical assistance orally or in writing:

(1) At any time during or at the conclusion of an inspection or investigation, including on the inspection form or investigation letter, regardless of whether the operation is deficient or in compliance with a particular licensing statute, rule, or minimum standard;

(2) As part of the ongoing regulatory process; or

(3) At your request.

§745.8585. May I request an administrative review for technical assistance that Licensing provided?

No. We provide technical assistance to help you understand and comply with licensing statutes, rules, and minimum standards. Technical assistance does not include a decision or action you may challenge through an administrative review. If we provide you with technical assistance in addition to citing you for a deficiency, you will have the right to request an administrative review related to the deficiency but not the technical assistance.