

TITLE 26 HEALTH AND HUMAN SERVICES
 PART 1 HEALTH AND HUMAN SERVICES COMMISSION
 CHAPTER 745 LICENSING
 SUBCHAPTER C OPERATIONS THAT ARE EXEMPT FROM REGULATION
 DIVISION 2 EXEMPTIONS FROM REGULATION

§745.115. What programs regulated by other governmental entities are exempt from Licensing regulation?

The following programs and facilities are exempt from our regulation:

Figure: 26 TAC §745.115

Governmental Entity	Description of Exempt Programs
(1) Federal	<p>(A) A facility operated on a federal installation, including military bases and Indian reservations; or</p> <p>(B) A program that provides 24-hour care exclusively to individuals not lawfully present in the United States who are in the custody of the federal government.</p>
(2) State	<p>(A) A facility operated by the Texas Juvenile Justice Department;</p> <p>(B) A facility providing services solely for the Texas Juvenile Justice Department;</p> <p>(C) Any other correctional facility for children operated or regulated by another state agency or political subdivision;</p> <p>(D) A treatment facility or structured program for treating chemically dependent persons that is licensed by the Texas Health and Human Services Commission;</p> <p>(E) A youth camp licensed by the Texas Department of State Health Services;</p> <p>(F) A youth camp exempt from licensure by the Texas Department of State Health Services under Texas Health and Safety Code, §141.0021, because it is:</p> <p style="padding-left: 40px;">(i) Operated by or on "a campus of an institution of higher education" or "a private or independent institution of higher education," as those terms are defined in Texas Education Code §61.003; and</p>

	(ii) Regularly inspected by a local governmental entity for compliance with health and safety standards.
(3) Municipal	<p>A recreation program for elementary age (5-13 years) children with the following criteria:</p> <p>(i) A municipality operates the program;</p> <p>(ii) The governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, although the governing body of a municipality with a population of at least 300,000 that has adopted standards by ordinance after public hearings at least twice may accept public comment through its Internet website for at least 30 days in lieu of having a public hearing;</p> <p>(iii) The program provides these standards to the parents of each program participant;</p> <p>(iv) The ordinances include child to caregiver ratios, minimum employee qualifications, minimum building, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards;</p> <p>(v) The program informs the parents that the state does not license the program; and</p> <p>(vi) The program does not advertise itself as a child care operation.</p>

§745.139. What will Licensing do if I operate a combination of exempt and regulated programs?

(a) If the programs are separate, each program that meets the criteria for an exemption is exempt. If they are not separate, then they are all subject to our regulation, unless the exempt program meets the exemption described in §745.115(1)(B) of this division.

(b) To demonstrate that the programs are separate, you must show that the programs:

(1) Have separate caregivers or have caregivers that do not provide care to more than one program at the same time; and

(2) Do not use the same building or areas at the same time, except that the programs may share restrooms and indoor/outdoor activity areas if you have a written plan regarding how caregivers from each program will supervise children using shared spaces.

TITLE 26	HEALTH AND HUMAN SERVICES
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CHAPTER 745	LICENSING
SUBCHAPTER L	ENFORCEMENT ACTIONS
DIVISION 1	OVERVIEW OF ENFORCEMENT ACTIONS

§745.8605. When can Licensing recommend or impose an enforcement action against my operation?

We can recommend or impose an enforcement action any time we find one of the following:

- (1) You supplied false information or made false statements during the application process;
- (2) You falsified or permitted to be falsified any record or other materials that are required to be maintained by minimum standards;
- (3) You do not have an acceptable reason for not having the required liability insurance in §745.251 of this chapter (relating to What are the acceptable reasons not to have liability insurance?);
- (4) You do not pay the required fees;
- (5) A single serious deficiency of a minimum standard, rule, or statute, including a finding of abuse or neglect or background check matches;
- (6) Several deficiencies that create an endangering situation;
- (7) A repetition or pattern of deficiencies;
- (8) An immediate threat or danger to the health or safety of children;
- (9) You or someone working at your operation refuses, prevents, or delays our ability to conduct an inspection or investigation, or the ability of the Department of Family and Protective Services to conduct an investigation of an allegation of abuse, neglect, or exploitation;
- (10) A failure to timely report necessary changes to Licensing;
- (11) A failure to comply with any restrictions or limits placed on your permit;
- (12) A failure to meet the terms and conditions of your probation;
- (13) A failure to comply with minimum standards, rules, or statutes at the end of the suspension period;

(14) A failure to submit information to us within two days of a change in your controlling persons, as required in §745.903 of this chapter (relating to When and how must an operation submit controlling-person information to Licensing?);

(15) You fail to correct by the compliance date any deficiency that is not pending due process;

(16) You apply for a permit after we designate you as a controlling person, but before the designation is sustained;

(17) It is within five years since your designation as a controlling person has been sustained;

(18) You apply for a permit to operate a child care operation, and you are barred from operating a child care operation in another state;

(19) You apply for a permit to operate a child care operation, and your permit to operate a child care operation in another state was revoked;

(20) You apply for a permit to operate a child care operation, and your permit to operate was revoked, suspended, or terminated by another Texas state agency as outlined in Texas Government Code, Chapter 531, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions);

(21) You apply for a permit to operate a child care operation and:

(A) You fail to comply with public notice and hearing requirements as set forth in §745.277 of this chapter (relating to What will happen if I fail to comply with public notice and hearing requirements?); or

(B) The results of the public hearing meet one of the criteria set forth in §745.340(b) of this chapter (relating to What factors will we consider when evaluating an application for a permit?).

(22) You operate a child care operation, and that operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides in good faith, information relating to the misuse of restraint or seclusion at the operation;

(23) A reason set forth in Texas Human Resources Code, §42.078;

(24) A failure to pay an administrative penalty under Texas Human Resources Code, §42.078;

(25) A failure to follow conditions or restrictions placed on a person's presence at an operation;

(26) During the application process you were exempt from the public notice and hearing requirements under §745.273(b) of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?), but you never provide or cease to provide trafficking victim services and fail to meet the public notice and hearing requirements; or

(27) You provide care to an unlawfully present individual in violation of Chapter 748, Subchapter B, Division 3 of this title (relating to Care of Unlawfully Present Individuals).