

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 745 LICENSING
SUBCHAPTER J WAIVERS AND VARIANCES FOR MINIMUM STANDARDS

§745.8301. What words must I know to understand this subchapter?

These words have the following meanings in this subchapter:

(1) Foster family home--A home that is the primary residence of the foster parent or parents and provides care to six or fewer children or young adults, under the regulation of a child-placing agency. Also referred to as "foster home."

(2) Foster parent--A person verified to provide child care services in the foster home.

(3) Kinship foster home--A foster family home with a foster parent or parents who:

(A) Is related to a foster child by consanguinity or affinity; or

(B) Has a longstanding and significant relationship with the foster child before the child is placed with the foster parent.

(4) Waiver--A decision by Licensing that waives an operation's compliance with a minimum standard if the economic impact of compliance with that standard is great enough to make compliance impractical.

(5) Variance--A decision by Licensing that there is good and just cause for an operation to meet the purpose of a minimum standard in a different way.

§745.8303. What minimum standards are ineligible for a waiver or variance?

A minimum standard is ineligible for a waiver or variance if the minimum standard is required by state or federal law.

§745.8305. How do I request a waiver or variance?

(a) You must request a waiver or variance in writing by submitting a completed:

(1) *Waiver/Variance Request* through your online account and separately providing any supporting documentation to your Licensing representative; or

(2) Form 2937 *Child Care Regulation Waiver/Variance Request*, or the information required by the form and any supporting documentation, to your Licensing representative.

(b) A waiver or variance request may only be for:

(1) One operation; and

(2) One minimum standard number or subsection.

(c) If a child-placing agency is requesting a waiver or variance for a minimum standard related to foster care, the waiver or variance request can be for only one foster home.

§745.8307. How long does Licensing have to process a request for a waiver or variance?

(a) Within 15 days after Licensing receives a request, the Licensing representative:

(1) Reviews the request and any supporting documentation; and

(2) Makes a recommendation to the supervisor or the supervisor's designee whether to grant the request for a waiver or variance.

(b) Within 15 days after receiving the Licensing representative's recommendation, the supervisor or designee makes the final decision whether to grant the waiver or variance.

(c) Within five days after the supervisor makes the final decision, Licensing staff notifies the requester of the final decision.

§745.8309. When does a waiver or variance expire, and what must I do before it expires?

(a) We grant a waiver or variance for a specific amount of time. The waiver or variance will include its expiration date.

(b) We may issue a waiver or variance for up to three years. If you need a waiver or variance for a time period that exceeds three years, you will have to submit a new request as explained in subsection (c) of this section.

(c) If you will still need a waiver or variance after the waiver or variance expires, you must submit a new request to us according to §745.8305 of this subchapter (relating to How do I request a waiver or variance?):

(1) At least 35 days prior to the expiration; or

(2) As soon as possible, if the expiration date of the waiver or variance is less than 35 days from the date we granted it.

(d) When your waiver or variance expires, you must comply with the minimum standard, even if a new request related to that standard is pending our review.

§745.8311. What conditions may Licensing place on an approved waiver or variance?

(a) We may place any condition on a waiver or variance we determine is necessary to protect the health and safety of children in your care.

(b) You must comply with each condition while the waiver or variance is in effect.

§745.8313. What factors do we consider when deciding whether to grant a waiver or variance?

When deciding whether to grant a waiver or variance, we consider:

(1) Whether the minimum standard is ineligible for a waiver or variance as outlined in §745.8303 of this subchapter (relating to What minimum standards are ineligible for a waiver or variance?);

(2) The risk to children if your operation **or foster home** does not meet the standard;

(3) The compliance history of your operation, **including past and current enforcement actions**;

(4) Any waivers or variances currently in effect;

(5) Your permit status, including if you are an applicant or have an initial license;

(6) Whether your operation is on heightened monitoring;

(7) Any economic factors or other constraints affecting your ability to comply;

(8) If the request is for a foster home, the additional factors for a foster home as required by §745.8315 of this subchapter (relating to What additional factors does Licensing consider when deciding whether to grant a waiver or variance for a foster home?); and

(9) Any other factor relevant to your request or operation that we identify.

§745.8315. What additional factors does Licensing consider when deciding whether to grant a waiver or variance for a foster home?

When the request is associated with a foster home, we will consider:

(1) The compliance history of the foster home.

(2) If the request is to increase the maximum number of foster children a foster home may care for, whether you may use the exception criteria under §749.2551(b) of this title (relating to What is the maximum number of children a foster family home may care for?); and

(3) Any limitations in state or federal law, including that:

(A) We only may issue a waiver if the home is a kinship foster home;

(B) We may not approve a request that would result in a foster home's total capacity exceeding eight foster children; and

(C) We may not approve a request that would result in a foster home's foster care capacity exceeding six foster children unless:

(i) You are requesting a variance for a reason in §749.2551(b)(1) of this title; and

(ii) You are not able to use the exception criteria under §749.2551(b) of this title to increase the foster home's foster care capacity.

§745.8317. What factors do we consider when determining the expiration date and conditions for a waiver or variance?

If we grant you a waiver or variance, we will also use the factors listed in §745.8313 of this subchapter (relating to What factors do we consider when deciding whether to grant a waiver or variance?) when determining the expiration date and what conditions to put on the waiver or variance.

§745.8319. Can Licensing amend or revoke a waiver or variance?

(a) A waiver or variance is not an entitlement. Accordingly, we may amend or revoke your waiver or variance if we determine that:

(1) Your waiver or variance does not address a risk to children that currently exists;

(2) The circumstances that supported the decision to grant the waiver or variance have changed;

(3) You fail to meet a condition; or

(4) Your waiver or variance requires an additional or alternative condition.

(b) If you disagree with an amendment to your waiver or variance, see §745.8321 of this subchapter (relating to What can I do if I disagree with Licensing's decision related to a waiver or variance?).

§745.8321. What can I do if I disagree with Licensing's decision related to a waiver or variance?

(a) When you disagree with the original expiration date or original conditions associated with a waiver or variance that Licensing granted:

Figure: 26 TAC §745.8321(a)

You may dispute the decision by:	While you dispute the decision you must:
(1)(A) Contacting the Licensing supervisor or designee who made the waiver or variance decision to discuss alternative options, who may further amend the waiver or variance as a result of this contact. If you and the Licensing supervisor or designee cannot reach an agreement, you may request an	(2)(A) Comply with the conditions until the expiration date; (2)(B) Comply with the minimum standard that was the subject of the waiver or variance after the expiration date if the decision sought under (1)(A) or (1)(B) is not

You may dispute the decision by:	While you dispute the decision you must:
<p>administrative review (see Subchapter M, Division 1 of this chapter (relating to Administrative Reviews)); or</p> <p>(1)(B) Requesting an administrative review (see Subchapter M, Division 1 of this chapter) without contacting the Licensing supervisor or designee who made the waiver or variance decision to discuss alternative options.</p>	complete by the expiration date.

(b) When we deny, revoke, or amend a waiver or variance:

Figure: 26 TAC §745.8321(b)

Decision	You may dispute the decision by:	While you dispute the decision you must:
(1) Denial of a waiver or variance.	(A) Requesting an administrative review (see Subchapter M, Division 1 of this chapter).	(B) Comply with the minimum standard for which you requested a waiver or variance.
(2) Revocation of a waiver or variance.	(A) Requesting an administrative review (see Subchapter M, Division 1 of this chapter).	(B) Comply with the minimum standard that was the subject of your waiver or variance.
(3) Amendment of a waiver or variance under §745.8319(a) of this subchapter (relating to Can Licensing amend or revoke a waiver or variance?), including amending a condition, the expiration date, or both.	(A)(i) Contacting the Licensing supervisor or designee who made the waiver or variance decision to discuss alternative options, who may further amend the waiver or variance as a result of this contact. If you and the Licensing supervisor or designee cannot reach an agreement, you may request an administrative review (see Subchapter M, Division 1 of this	<p>(B)(i) Comply with the amended condition and all other conditions until the expiration date if we amended a condition;</p> <p>(B)(ii) Comply with the minimum standard that was the subject of the waiver or variance after the expiration date if the decision sought under (A)(i) or (A)(ii) is not complete by the expiration date.</p>

Decision	You may dispute the decision by:	While you dispute the decision you must:
	<p>chapter); or</p> <p>(A)(ii) Requesting an administrative review (see Subchapter M, Division 1 of this chapter) without contacting the Licensing supervisor or designee who made the waiver or variance decision to discuss alternative options.</p>	

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REPEAL

§745.8301. What if I cannot comply with a specific minimum standard?

§745.8303. What is the difference between a waiver and a variance?

§745.8305. How do I request a waiver or variance?

§745.8307. How does Licensing make the decision to grant or deny my waiver or variance request?

§745.8309. Who makes the decision to grant or deny my waiver or variance request?

§745.8311. Does a waiver or variance expire?

§745.8313. Is a waiver or variance unconditional?

§745.8315. What if I disagree with the time limit or conditions that Licensing places on my waiver or variance?

§745.8317. Can Licensing amend or revoke a waiver or variance, including its conditions?

§745.8319. What can I do if Licensing denies or revokes my waiver or variance?