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Child Care Regulation Waivers and Variances Rule Updates

Rules Effective October 16, 2023

Agenda

- Purpose and background
- Review of rule changes
- How to comply with the rules
- Summary
- Contacting CCR



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Purpose and Background

- Rule changes in Texas Administrative Code (TAC) Title 26, Subchapter J for Waivers and Variances
- Needed to meet federal statute requirements and to clean up current rules
- Effective October 16th, 2023



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Federal Statute Relating to Foster Homes

- United States Code Section 671(a)(10)
 - CCR may only approve a waiver for a kinship foster home, not a non-kinship foster home



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New Terms in 26 TAC §745.8301

- Foster Family Home
- Foster Parent
- Kinship Foster Home



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Waiver and Variance Requests for Foster Homes

- 26 TAC §745.8315 adds factors that CCR will consider when processing a request.



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Subchapter J Changes

- All rules repealed and replaced with new rules to:
 - Support current practices; and
 - Clarify language



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Statutory Requirements

26 TAC §745.8303

CCR cannot grant a waiver or variance if the standard is required by law



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Requesting a Waiver or Variance

26 TAC §745.8305

- Use Form 2937 Child Care Regulation Waiver/Variance Request; or
- Submit online through your CCR Online Account.

In either case:

- Only request for one operation and one minimum standard
- For a CPA, only for one foster home



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CCR's Timeframe for Processing a Waiver or Variance Request

26 TAC §745.8307

- 15 days for inspector to recommend granting or denying to the supervisor
- 15 days after the recommendation, supervisor makes a decision
- Five days after decision, notifies you



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When a Waiver or Variance Expires

26 TAC §745.8309

Timeframes for renewing your request:

- At least 35 days before expiration; or
- ASAP if expiration is less than 35 day from the date CCR granted.

If you do not renew your waiver or variance by these timeframes, you must comply with the minimum standard.



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Conditions for a Granted Waiver or Variance

26 TAC §745.8311

CCR may place any condition on a waiver or variance.

You must comply with each condition at all times.

This is now a weighted rule.



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Factors CCR Considers for Waiver or Variance Requests

26 TAC §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;

- (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;



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Factors CCR Considers for Waiver or Variance Continued

26 TAC §745.8313

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



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Factors for Considering Whether to Grant for a Foster Home

26 TAC §745.8315

- Additional factors to 26 TAC §745.8313
 - Compliance history of foster home
 - Can the foster home use capacity exception criteria instead?
- Limitations on state or federal law including:
 - Only grant a waiver for a kinship foster home;
 - Deny a request if capacity would exceed eight foster children; and
 - Deny a request if capacity would exceed six children



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Factors for Setting Conditions

26 TAC §745.8317

- CCR uses the factors in 26 TAC §745.8313 to set conditions and expiration date



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Amending or Revoking the Waiver or Variance

26 TAC §745.8319

- A waiver or variance is not an entitlement
- CCR can amend or revoke a waiver or variance



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Disputing CCR's Decision on a Waiver or Variance

26 TAC §745.8321

Your operation:

- May request an administrative review without contacting the CCR supervisor first;
- Must comply with the standard after the waiver or variance expires;
- Can dispute CCR's decision to amend the waiver or variance by:
 - Contacting the supervisor; or
 - Requesting an administrative review.



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Summary

- Rule changes needed to clarify procedure;
- Methods for submitting a request
 - 2937 Child Care Regulation Waiver or Variance Request; or
 - CCR Online Account
- Request review to enforcement of:
 - Denied request; or
 - Conditions or expiration date for an approved request.



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Contacts

- Your CCR Representative
- Day Care Operations:
 - MSC@hhs.Texas.gov
- 24-Hour Residential Child Care Operations:
 - rccrstan@hhs.Texas.gov



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Thank you
