



# Minimum Standards Revision Notice

---

**Date:** March 1, 2023

**Effective Date:** March 1, 2023

**To:** All Holders of Chapter 746, Minimum Standards for Child-Care Centers

**From:** Rachel Ashworth-Mazerolle, HHSC Associate Commissioner for Child Care Regulation

**Subject:** Comprehensive Review of Chapter 746

The amendments, new sections, and repeals are necessary to implement Texas Human Resources Code (HRC) §42.042(b), which requires HHSC Child Care Regulation (CCR) to conduct a comprehensive review of minimum standards at least once every six years.

The changes are the result of recommendations based on input from CCR staff and stakeholders, including child-care providers, caregivers, advocates, parents, and the public, compiled during the comprehensive review of all minimum standards located in Chapter 746.

The changes are effective March 1, 2023.

## Comprehensive Review of Chapter 746

This memo covers substantive changes made to the rules as a result of CCR's comprehensive rule review.

In addition to the substantive changes outlined in this memo, CCR made non-substantive changes to other rules to improve the understanding and readability of the rules. In addition, CCR added or updated Technical Assistance (TA) boxes that follow the rules in the minimum standards publication to provide additional clarification and/or additional resources. These non-substantive changes and updates to TA boxes are not identified in this document but are identified in the highlighted version of the rules.

### Specific Rule Changes

#### Definitions

§746.121. What do certain pronouns mean when used in this chapter?

§746.123. What do certain words and terms mean when used in this chapter?

Amended §746.121 updates the title of the department and agency to reflect that HHSC CCR regulates child-care centers.

Amended §746.123:

- Adds the terms and definitions for "activity plan," "contract service provider," "hazardous materials," and "weather permitting";
- Updates and clarifies the definitions for the terms "age-appropriate," "caregiver," "certified lifeguard," "corporal punishment," "sanitize," and "special care needs"; and
- Changes the term "state or local fire marshal" to "state or local fire authority" and clarifies its definition.

#### Administration and Communication

§746.201. What are my responsibilities as the permit holder?

§746.305. What other situations require notification to Licensing?

§746.307. What emergency or medical situations must I notify parents about?

§746.405. What telephone numbers must I post and where must I post them?

§746.501. What written operational policies must I have?

Amended §746.201:

- At (5), clarifies that an employee or volunteer:
  - Must report suspected abuse, neglect, or exploitation directly to the Texas Abuse and Neglect Hotline; and
  - May not:
    - Delegate the responsibility to make a report;
    - Be required to seek approval to file a report; or
    - Be required to notify the operation that a report was made.
- At (6), clarifies that ensuring the confidentiality of background check information includes not disclosing background check information to unauthorized persons.

Amended §746.305(6) adds language to clarify that a child-care center must report to CCR the occurrence of a non-routine situation that places, or may place, a child at risk for injury or harm.

Amended §746.307(4) adds language to clarify that a child-care center must report to a child’s parents when the child has been involved in a non-routine situation that placed, or may have placed, the child at risk for injury or harm.

Amended §746.405(2) adds the telephone number for poison control.

Amended §746.501 adds content that a child care center must include in its operational policies. The operational policies must now include:

- At (a)(18)(F), the criteria the child-care center will use to determine when extreme weather conditions pose a significant health risk that prohibits or limits outdoor play; and
- At (a)(30), procedures for supporting inclusive services to children with special care needs that include the requirements in §746.2202.

## **Record Keeping**

§746.605. What admission information must I obtain for each child?

§746.701. What written records must I keep of accidents and incidents that occur at my child-care center?

§746.901. What information must I maintain in my personnel records?

Amended §746.605 updates the information a child-care center must obtain for each child’s admission as follows:

- At (10), adds a requirement that the child-care center must include whether a child is able to swim without assistance, if the child-care center provides water activities;

- At (13), updates the information that the child-care center must include in the statement of a child’s special care needs, including:
  - Medications prescribed for continuous, long-term use;
  - Limitations or restrictions on the child’s activities; and
  - Special care the child requires, including:
    - Any reasonable accommodations or modifications;
    - Any adaptive equipment provided for the child, and instructions for its use; and
    - Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care.
- At (13), removes from the previous special care needs statement requirements, the inclusion of:
  - Allergies;
  - Existing illness;
  - Previous serious illness and injuries; and
  - Hospitalizations during the past twelve months.
- At (16), requires the child-care center to include a child’s allergies (previously included in the special care needs statement) with a completed food allergy emergency plan, if applicable.

Amended §746.701(5) adds language to clarify that a child-care center must keep a written record of any non-routine situation that placed, or may have placed, a child at risk for injury or harm on the Licensing *Incident/Illness Report Form 7239* or on another form with the same information.

Amended §746.901(5) clarifies that documentation required by §746.1329 must be maintained in the operation’s personnel records.

### **Personnel - Director**

§746.1005. If I have multiple operations, must I designate a separate director for each operation?

§746.1011. Must my director be at my child-care center during all hours of operation?

§746.1015. What qualifications must the director of my child-care center licensed for 13 or more children meet?

§746.1017. What qualifications must the director of my child-care center licensed for 12 or fewer children meet?

New §746.1005:

- At (a), requires a governing body with multiple operations to designate a separate director for each operation; and
- At (b), provides a compliance date of no later than March 1, 2025, for operations that currently have a single director designated for more than one operation.

New §746.1011 replaces the former §746.1011 regarding director presence at the child-care center. New §746.1011 updates the requirements for how frequently a director must be present at the child-care center. In particular, the rule:

- At (a), requires a child-care center director to be present at the operation a minimum of:
  - 75 percent of the program’s operating hours each week; or
  - 30 hours per week, whichever is less.
- At (a), provides exceptions for vacation, personal time off, and professional development activities; and
- At (b), provides a compliance date of no later than March 1, 2025, for operations that currently have a single director designated for more than one operation.

Amended §746.1015(5) clarifies the educational requirements related to a Child Development Associate credential or Certified Child-Care Professional credential to qualify as a director of a child-care center licensed for 13 or more children.

Amended §746.1017(4) clarifies the educational requirements related to a Child Development Associate credential or Certified Child-Care Professional credential to qualify as a director of a child-care center licensed for 12 or fewer children.

## **Personnel – Caregiver Responsibilities/Supervision**

§746.1203. What additional responsibilities do my caregivers have?

§746.1205. What responsibilities does a caregiver have when supervising a child or children?

Amended §746.1203:

- At (4), adds a requirement that caregivers must provide care that is consistent with a child’s habits, interests, strengths, and any special needs, including any special supervision needs or care;
- At (6), replaces a previous requirement that caregivers must ensure children are not out of control with a requirement that caregivers must set

appropriate behavior expectations based on the child's current stage of development; and

- Removes the following caregiver responsibilities because they are now included in new §746.1205:
  - Caregivers must know which children they are responsible for;
  - Caregivers must know each child's name; and
  - Caregivers must have information showing each child's age.

New §746.1205 replaces the former §746.1205 regarding supervision. New §746.1205 more specifically outlines the responsibilities a caregiver has when supervising children.

- The rule outlines the following caregiver responsibilities at (a):
  - Knowing which children the caregiver is responsible for;
  - Knowing how many children the caregiver is responsible for;
  - Knowing each child's name and having information showing each child's age;
  - Providing the level of supervision necessary to ensure each child's safety and well-being, including physical proximity and auditory or visual awareness of each child's on-going activity as appropriate; and
  - Being able to intervene when necessary to ensure each child's safety.
- The rule requires the caregiver to consider the following factors at (b) when deciding how closely to supervise a child:
  - The child's chronological age;
  - The child's current stage of development;
  - The child's individual differences and abilities;
  - The indoor and outdoor layout of the operation;
  - The circumstances, hazards, and risks surrounding the child; and
  - The child's physical, mental, emotional, and social needs.

## **Personnel – Professional Development**

§746.1301. What are the training requirements for employees, caregivers, and directors?

§746.1309. What areas of training must the annual training for caregivers cover?

§746.1311. What areas of training must the annual training for my child-care center director cover?

§746.1317. Must the training for my caregivers and the director meet certain criteria?

§746.1319. Does Licensing approve training resources or trainers for training hours?

§746.1323. If I hire a caregiver or a director that received training at another operation, may these hours count towards the annual training requirement at my center?

Amended §746.1301:

- Updates the rule title; and
- Adds new subsection (b) to clarify that at least one caregiver or employee with a current certification in pediatric CPR must be on the premises with a caregiver or employee without current pediatric CPR certification.

Amended §746.1309(g) clarifies that at least five of the 24 required annual training hours for caregivers must come from instructor-led training.

Amended §746.1311(j) clarifies that at least six of the 30 required annual training hours for a director must come from instructor-led training.

Amended §746.1317(6) clarifies when a director may provide training to employees of the child-care center.

Amended §746.1319 adds new subsection (b) to require that any block certification training must allocate clock hours to each specific training topic.

### **Personnel – Substitutes, Volunteers, or Contractors**

§746.1401. What minimum standards must substitutes, volunteers, or contractors comply with?

§746.1403. What are the training requirements for substitutes, volunteers, and contractors?

§746.1405. When is a substitute, volunteer, or contractor exempt from the pre-service training?

Amended §746.1401:

- Updates the rule title;
- Updates the rule to include the term “contractors” and removes any clarifications regarding the role as the information is now included in §746.123(19);
- Adds a requirement that substitutes, volunteers, and contractors comply with training requirements included in new §746.1403;

- Removes the following requirements because they are now included in new §746.1403:
  - All substitutes, volunteers, and contractors must complete orientation; and
  - Substitutes, volunteers, and caregivers counted in the child to caregiver ratio must complete all required pre-service training within 90 days or cease performing caregiver duties until the training is complete.

New §746.1403 outlines the training requirements for substitutes, volunteers, and contractors. The rule:

- Does not contain any new training requirements, but incorporates previous requirements from §746.1401 that required substitutes, volunteers, and contractors to:
  - Comply with minimum standards that apply to employees or caregivers, depending on their role at the operation. §746.1403 focuses solely on minimum standards related to training;
  - Complete orientation; and
  - Complete pre-service training within 90 days or cease performing caregiving duties until the training is complete.
- Clarifies that least one caregiver or employee with a current certification in pediatric CPR be on the premises with a substitute, volunteer, or contractor without current pediatric CPR certification if the substitute, volunteer, or contractor is counted in the child to caregiver ratio.

New §746.1405 outlines the circumstances that exempt a substitute, volunteer, or contractor from pre-service training requirements. These circumstances include if the individual:

- Has at least two years of documented prior experience in a regulated child-care center; or
- Can provide documentation of at least eight clock hours of training in areas specified in §746.1305 at another regulated child-care center.

### **Child/Caregiver Ratios**

§746.1605. When may I combine infants with children 18 months and older?

Amended §746.1605:



- Updates the rule title; and
- Adds new paragraph (2) referencing §746.1703 to clarify that a child-care center may combine infants with children 18 months of age and older without regard to age when the center has 12 or fewer children in care.

## **Developmental Activities and Activity Plan**

§746.2201. What must caregivers consider when providing planned activities for the children in their care?

§746.2202. What are my responsibilities when planning activities for a child in care with special care needs?

Amended §746.2201:

- Updates the rule title; and
- Removes requirements related to children with special care needs because they are now included in new §746.2202.

New §746.2202 outlines the child-care center’s responsibilities when planning activities for a child in care with special care needs. These responsibilities include:

- Providing a child with special care needs the accommodations recommended by a health-care professional or a qualified professional affiliated with the local school district or early intervention program;
- Utilizing as recommended any adaptive equipment provided to the child-care center for a child’s use;
- Ensuring a child who receives early intervention services or special education services can receive those services from a qualified service provider at the operation, with parental request and approval;
- Ensuring that activities integrate children with and without special care needs; and
- Ensuring that caregivers adapt equipment and procedures and vary methods as necessary to care for a child with special needs in a natural environment.

## **Basic Care Requirements for Infants**

§746.2403. How must I arrange the infant care area?

§746.2405. What furnishings and equipment must I have in the infant care area?

§746.2415. What specific types of equipment am I prohibited from using with infants?

§746.2424. Where must an infant sleep?

§746.2426. May I allow infants to sleep in a restrictive device?

§746.2427. How must I position an infant for sleep?

Amended §746.2403(3) adds a reference to §746.1605.

Amended §746.2405(3) adds language to clarify that a child-care center is required to have an individual crib, cot, bed, or mat for each:

- Walking infant; and
- Non-walking infant 12 months of age or older.

Amended §746.2415(b) adds a play yard as sleeping equipment that must be bare, except for a tight-fitting sheet, for an infant younger than 12 months of age.

New §746.2424 requires an infant to sleep in a designated crib, cot, bed, or mat.

Amended §746.2426 adds language to clarify that an infant may not sleep in a restrictive device unless the operation has a Sleep Exception Form with a signed statement from a health-care professional.

Amended §746.2427:

- Updates the rule title;
- At (a), adds a requirement that an employee or caregiver must place an infant in a face-up sleeping position, regardless of whether the infant can turn over independently, unless there is a completed Sleep Exception form on file for the infant; and
- At (b), adds language to clarify that an infant who is developmentally able to roll from back to stomach and stomach to back may do so independently after the employee or caregiver has placed the infant in a face-up position for sleep.

## **Basic Care Requirements for Pre-Kindergarten Age Children**

§746.2601. What are the basic requirements for pre-kindergarten age children?

New §746.2601 replaces the former §746.2601 regarding basic care requirements for pre-kindergarten age children. New §746.2601:

- Adds a new requirement for routines such as diapering or toileting, eating, napping resting, and indoor and outdoor activity times; and
- Incorporates previous requirements for:
  - Individual attention given to each pre-kindergarten age child; and
  - Interactions that encourage children to communicate and express feelings in appropriate ways.

## Discipline and Guidance

§746.2805. What types of discipline and guidance or punishment are prohibited?

Amended §746.2805:

- Adds to the list of prohibited discipline and guidance methods:
  - At (3), grabbing or pulling on a child; and
  - At (8), placing a child in a restrictive device for time out.
- Removes from the list of prohibited discipline and guidance methods the following methods because they have been incorporated into the definition of corporal punishment:
  - Pinching, shaking, or biting a child; and
  - Hitting a child with a hand or instrument.
- Removes from (10) a reference to requiring a child to remain in a restrictive device, because that requirement has been clarified and added as a separate type of prohibited discipline and guidance at (8).

## Nutrition and Food Service

§746.3301. What are the basic requirements for meal and snack times?

Amended §746.3301:

- At (e), adds language to clarify that the child-care center must serve enough food to allow a child to have a second serving from the vegetable, fruit, grain, and milk groups if the child requests it;
- At (f), adds a requirement that the supply of drinking water must be clean, sanitary, and available during active play; and
- At (g), clarifies that the child-care center may not serve beverages with added sugars unless otherwise allowed by the Child and Adult Care Food Program.

## Health Practices

§746.3601. What type of illness would prohibit a child from attending the child-care center?

Amended §746.3601(3)(D) adds an allowance for a child-care center to use an infrared temporal (forehead) thermometer to assess a child's temperature and provides guidelines for a temperature reading indicative of illness.

## Safety Practices

§746.3701. What safety precautions must I take to protect children in my child-care center?

§746.4003. What items must each first-aid kit contain?

Amended §746.3701(7) adds bottle warmers to the list of hazards that must be inaccessible to children and requires that they be used only according to manufacturer instructions.

Amended §746.4003:

- Removes the requirement for cotton balls in a first-aid kit; and
- At (4), updates the requirement for adhesive bandages in a first-aid kit so that they do not have to be multi-sized.

## Physical Facilities

§746.4217. May I care for children above or below ground level?

Amended §746.4217(2) adds a requirement that a child-care center must follow any restrictions issued by the state or local fire authority when seeking approval to care for children above or below ground level.

## Transportation

§746.5607. What child passenger safety seat system must I use when I transport children?

§746.5625. When and how must I install and use an electronic child safety alarm in a vehicle?

Amended §746.5607:

- At (b), adds a requirement that a child-care center must only use child safety seats and child booster seats that have not expired or been damaged or involved in an accident; and
- At (e), updates the safety restraint device requirements to be consistent with current recommendations from the Texas Department of Transportation and the American Academy of Pediatrics.

Amended §746.5625 adds a requirement that the driver or designated employee do the following before disabling the alarm of a vehicle equipped with an electronic child safety alarm from the rear of the vehicle:

- Verify that all children have been accounted for; and
- Conduct a physical walk-through and visual check of the vehicle to ensure no children remain in the vehicle.

## Highlighted Versions

You may view highlighted versions of the adopted rules and the updated minimum standards publication at [Minimum Standards | Texas Health and Human Services](#).

If you have questions, please contact your CCR inspector or send an email to [HHSC Minimum Standards Comments](#).