

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 748 MINIMUM STANDARDS FOR GENERAL RESIDENTIAL
OPERATIONS
SUBCHAPTER B DEFINITIONS AND SERVICES
DIVISION 1 DEFINITIONS

§748.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by one of the following regional accrediting entities:

(A) The Southern Association of Colleges and Schools Commission on Colleges, a subdivision of the Southern Association of Colleges and Schools;

(B) The Middle States Commission on Higher Education, a component of the Middle States Association of Colleges and Schools;

(C) The Commission on Institutions of Higher Education, a subdivision of the New England Association of Schools and Colleges;

(D) The Higher Learning Commission (formerly part of the North Central Association of Colleges and Schools);

(E) The Northwest Commission on Colleges and Universities;

(F) The Accrediting Commission for Senior Colleges and Universities, a subdivision of the Western Association of Schools and Colleges; or

(G) The Accrediting Commission for Community and Junior Colleges, a subdivision of the Western Association of Schools and Colleges.

(2) Activity space--An area or room used for child activities.

(3) Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, sociocultural background, and community setting.

(4) Adult--A person 18 years old or older.

(5) Caregiver--A person counted in the child/caregiver ratio, whose duties include the direct care, supervision, guidance, and protection of a child. This does not include a contract service provider who:

(A) Provides a specific type of service to your operation for a limited number of hours per week or month; or

(B) Works with one particular child.

(6) Certified lifeguard--A person who has been trained in rescue techniques, lifesaving, and water safety by a qualified instructor from a recognized organization that awards a certificate upon successful completion of the training. A certified lifeguard ensures the safety of persons by preventing and responding to water related emergencies.

(7) Chemical restraint--A prohibited type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of a medication is not a chemical restraint under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for medical or dental reasons; and

(C) Has a secondary effect of immobilizing or sedating a child.

(8) Child in care--A child who is currently admitted as a resident of a general residential operation, regardless of whether the child is temporarily away from the operation, as in the case of a child at school or at work. Unless a child has been discharged from the operation, the child is considered a child in care.

(9) Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(10) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(11) Childhood activities--Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §748.705 of this chapter (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities.

(12) Contract service provider--A person or entity that is contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(13) Corporation or other type of business entity--May include an association, corporation, nonprofit association, nonprofit corporation, nonprofit association with religious affiliation, nonprofit corporation with religious affiliation, limited liability company, political subdivision, or state agency. For purposes of this chapter, this definition does not include any type of "partnership," which is defined separately.

(14) Cottage or cottage home--A living arrangement for children who are not receiving treatment services in which:

(A) Each group of children has separate living quarters;

(B) 12 or fewer children are in each group;

(C) Primary caregivers live in the children's living quarters, 24 hours per day for at least four days a week or 15 days a month; and

(D) Other caregivers are used only to meet the child-to-caregiver ratio in an emergency or to supplement care provided by the primary caregivers.

(15) Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(16) Days--Calendar days, unless otherwise stated.

(17) De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(18) Department--The Texas Department of Family and Protective Services (DFPS).

(19) Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

(20) Emergency behavior intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(21) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of a medication is not an emergency medication under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for a medical or dental reason (e.g. Benadryl for an allergic reaction or medication to control seizures); and

(C) Has a secondary effect of modifying a child's behavior.

(22) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury, so that intervention is immediately necessary to prevent:

(A) Imminent probable death or substantial bodily harm to the child because the child attempts or continually threatens to commit suicide or substantial bodily harm; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

(23) Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. For the purposes of this chapter, employees include all operation staff and any owner who is present at the operation or transports any child in care.

(24) Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

(25) Field trip--A group activity conducted away from the operation.

(26) Food service--The preparation or serving of meals or snacks.

(27) Full-time--At least 30 hours per week.

(28) Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(29) General Residential Operation--A residential child-care operation that provides child care for seven or more children or young adults. The care may include treatment services or programmatic services. These operations include formerly titled emergency shelters, operations providing basic child care, residential treatment centers, and halfway houses.

(30) Governing body--A group of persons or officers of the corporation or other type of business entity having ultimate authority and responsibility for the operation.

(31) Grounds--Includes any parcel of land where the operation is located and any building, other structure, body of water, play equipment, street, sidewalk, walkway, driveway, parking garage, or parking lot on the parcel. Also referred to as "premises" in this chapter.

(32) Group of children--Children assigned to a specific caregiver or specific caregivers. Generally, the group stays with the assigned caregivers throughout the day and may move to different areas throughout the operation, indoors and out. For example, children who are assigned to specific caregivers occupying a unit or cottage are considered a group.

(33) Health-care professional--A licensed physician, licensed advanced practice registered nurse (APRN), physician's assistant, licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's license. This does not include physicians, nurses, or other medical personnel not licensed to practice in the United States or in the country in which the person practices.

(34) High-risk behavior--Behavior of a child that creates an immediate safety risk to self or others. Examples of high-risk behavior include suicide attempt, self-abuse, physical aggression causing bodily injury, chronic running away, substance abuse, fire-setting, and sexual aggression or perpetration.

(35) Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(36) Immediate danger--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury to self or others, or the probability of bodily harm resulting from a child running away. Immediate danger does not include:

- (A) Harm that might occur over time or at a later time; or
- (B) Verbal threats or verbal attacks.

(37) Infant--A child from birth through 17 months.

(38) Livestock--An animal raised for human consumption or an equine animal.

(39) Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(40) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(41) Mental health professional--Refers to:

- (A) A psychiatrist licensed by the Texas Medical Board;
- (B) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(C) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(D) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(E) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(F) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

(42) Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(43) Non-mobile--A child that is not able to move from place to place, even with assistance.

(44) Normalcy--See §748.701 of this chapter (relating to What is "normalcy"?).

(45) Operation--General residential operations, including residential treatment centers.

(46) Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns the operation.

(47) Parent--A person or entity that has legal responsibility for or legal custody of a child, including the managing conservator, or legal guardian of the child or a legally authorized representative of an entity with that status.

(48) Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(49) Permit holder--The owner of the operation that is granted the permit.

(50) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your operation voluntarily closes or is required to close through an enforcement action in Subchapter L of Chapter 745 (relating to Enforcement Actions).

(51) Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(52) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity.

(53) Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(54) Premises--See the term "grounds" and its definition in this section.

(55) PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(56) Prone restraint--A restraint in which the child is placed in a chest-down hold.

(57) Psychosocial assessment--An evaluation by a mental health professional of a child's mental health that includes a:

(A) Clinical interview of the child;

(B) Diagnosis from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5), or statement that rules out a DSM-5 diagnosis;

(C) Treatment plan for the child, including whether further evaluation of the child is needed (for example: is a psychiatric evaluation needed to determine if the child would benefit from psychotropic medication or hospitalization; or is a psychological evaluation with psychometric testing needed to determine if the child has a learning disability or an intellectual disability); and

(D) Written summary of the assessment.

(58) Re-evaluate--Re-assessing all factors required for the initial evaluation for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(59) Regularly--On a recurring, scheduled basis. Note: For the definition for "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(60) Residential child-care operation--A licensed or certified operation that provides residential child care. Also referred to as a "residential child-care facility."

(61) Residential Treatment Center (RTC)--A general residential operation for seven or more children or young adults that exclusively provides treatment services for children with emotional disorders.

(62) Sanitize--The use of a product (usually a disinfecting solution) registered by the Environmental Protection Agency (EPA) that substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labeling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labeling instructions for sanitizing (a bleach product, for example), you must conduct these steps in the following order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or item to air-dry.

(63) School-age child--A child who is five years old or older and is enrolled in or has completed kindergarten.

(64) Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(65) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other children and the placement of the child alone in an area from which the child is prevented from leaving. Examples of such an area include where the child is prevented from leaving by a physical barrier, force, or threat of force.

(66) Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(67) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(68) State or local fire authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors.

(69) State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of the city, county, or state government.

(70) Substantial physical injury--Physical injury serious enough that a reasonable person would conclude that the injury needs treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damages to internal organs. Evidence that physical injury is serious includes the location, severity of the bodily harm, and age of the child. Substantial physical injury does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(71) Supine restraint--Placing a child in a chest up restraint hold.

(72) Supplements--Includes vitamins, herbs, and any supplement labeled dietary supplement.

(73) Swimming activities--Activities related to the use of swimming pools, wading/splashing pools, hot tubs, or other bodies of water.

(74) Toddler--A child from 18 months through 35 months.

(75) Trafficking victim--A child who has been recruited, harbored, transported, provided or obtained for the purpose of forced labor or commercial sexual activity, including any child subjected to an act or practice as specified in Texas Penal Code §20A.02 or §20A.03.

(76) Trauma informed care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:

(A) The impact that traumatic experiences have on the lives of children;

(B) The symptoms of childhood trauma;

(C) An understanding of a child's personal trauma history;

(D) The recognition of a child's trauma triggers; and

(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.

(77) Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

(78) Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for the human immunodeficiency virus (HIV), the hepatitis B virus (HBV), and other blood-borne pathogens.

(79) Unsupervised childhood activities--Childhood activities that a child in care participates in away from the operation and the caregivers. Childhood activities that an operation sponsors, conducts, or supervises are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

(80) Vaccine-preventable disease--A disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(81) Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the operation without monetary compensation; or

(B) Any type of services under the auspices of the operation without monetary compensation when the person has unsupervised access to a child in care.

(82) Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

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OPERATIONS
SUBCHAPTER P PHYSICAL SITE
DIVISION 1 GROUNDS AND GENERAL REQUIREMENTS

§748.3319. What "No Trespassing" signs must I post if my operation is a residential treatment center?

(a) If your operation is a residential treatment center, you must post the "No Trespassing" signs required by subsections (b) and (c) of this section.

(b) You may create your own "No Trespassing" signs or use the ones we provide you, but the signs must:

(1) State that entry to the property is forbidden;

(2) Include a description of the provisions of §30.05, Penal Code, including the penalties for violating §30.05, Penal Code;

(3) Include the name and address of the person under whose authority the notice is posted, unless your operation provides trafficking victim services under Subchapter V of this chapter (relating to Additional Requirements for Operations that Provide Trafficking Victim Services);

(4) Be written in English and Spanish; and

(5) Be at least 8-1/2 by 11 inches in size.

(c) You must post the "No Trespassing" signs in the following places:

(1) Parallel to and along the exterior boundaries of the grounds;

(2) For grounds not fenced, at least every 500 feet along the exterior boundaries of the grounds;

(3) At each roadway or other way of access to the grounds;

(4) At each entrance to the grounds; and

(5) In conspicuous places reasonably likely to be viewed by intruders.

Technical Assistance

Regarding paragraph (c)(1), at least one sign needs to be posted on each side of fenced property.

Regarding paragraph (c)(5), conspicuous places for posting include any other location on the grounds that an intruder may be likely to gain access to children, but does not include every door or window at the operation. Additionally, each sign should be placed where the sign can be easily seen and read. The signs should not be obstructed from view.

§748.3321. What additional responsibilities do I have regarding the “No Trespassing” signs if my operation is a residential treatment center?

Regarding the “No Trespassing” signs described in §748.3319 of this chapter (relating to What “No Trespassing” signs must I post if my operation is a residential treatment center?), you:

(1) Must ensure each “No Trespassing” sign is legible and reflects under whose authority the sign is currently posted; and

(2) May request new “No Trespassing” signs from us, as needed to ensure you are in compliance with the rules in this chapter.

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SUBCHAPTER V ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE
TRAFFICKING VICTIM SERVICES
DIVISION 2 POLICIES AND PROCEDURES

§748.4553. What safety and security policies must I develop?

You must develop written policies that address:

(1) The measures you will implement to ensure the safety and security of trafficking victims and employees, including measures that address both interior and exterior security while promoting a comfortable and nurturing environment **on the grounds of your operation**;

(2) Employee protocols and procedures for ensuring a safe environment, including:

(A) An internal and external communication system that addresses emergency situations; and

(B) How to handle visitors not allowed on the premises of the operation; and

(3) Appropriate safeguards with respect to a trafficking victim's access to forms of communication, including telephones, cell phones, computer, internet, mail, and visitors, which may pose a risk of further victimization of the child.

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TRAFFICKING VICTIM SERVICES
DIVISION 4 TRAINING

§748.4659. What areas or topics must the four hours of training regarding trafficking victims include?

The four hours of annual training must include:

(1) One hour of training in preventing compassion fatigue and secondary traumatic stress; and

(2) Three hours of training in areas appropriate to the needs of children for whom the operation or caregiver will be providing care, which may include:

(A) Typology of trafficking victims;

(B) Manifestations of trauma and practice in trauma informed care;

(C) How trafficking victims are manipulated and controlled;

(D) Making informed decisions and setting boundaries for trafficking victims;

(E) Understanding and avoiding the triggers of trafficking victims;

(F) Creating and maintaining nurturing environments for trafficking victims;
and

(G) Identifying and responding to internal and external safety and security risks at the operation, including the grounds of the operation (e.g., high flight risk, potential self-harm, harm to others, internal recruitment, unapproved visitors, and intruders).