

TITLE 26                   HEALTH AND HUMAN SERVICES  
PART 1                     HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 748            GENERAL RESIDENTIAL OPERATIONS  
SUBCHAPTER A         PURPOSE AND SCOPE

§748.7. How are these regulations applied to family residential centers?

(a) Definition. A family residential center is one that meets all of the following requirements:

(1) The center is operated by or under a contract with United States Immigration and Customs Enforcement;

(2) The center is operated to enforce federal immigration laws;

(3) Each child at the center is detained with a parent or other adult family member, who remains with the child at the center; and

(4) A parent or family member with a child provides the direct care for the child except for specific circumstances when the child is cared for directly by the center or another adult in the custody of the center.

(b) Classification. A family residential center is a general residential operation (GRO) and must comply with all associated requirements for GROs, unless the family residential center is approved for an individual waiver or variance or an exception is provided in this section. The department is responsible for regulating the provision of childcare as authorized by Chapters 40 and 42, Texas Human Resources Code and Chapter 261, Texas Human Resources Code. The department does not oversee requirements that pertain to other law, including whether the facilities are classified as secure or in compliance with any operable settlement agreements or other state or federal restrictions.

(c) Exceptions. A family residential center is not required to comply with all terms of the following Minimum Standards:

(1) the limitation of room occupants to four in §748.3357 of this title (relating to What are the requirements for floor space in a bedroom used by a child?), except that nothing in this exception shall be construed to require fewer than 60 square feet per child;

(2) the limitation on a child sharing a bedroom with an adult in §748.3361 of this title (relating to May a child in care share a bedroom with an adult?), if the bedroom is being shared in order to allow a child to remain with the child's parent or other family member; and

(3) the limitations on children of the opposite gender sharing a room in §748.3363 of this title (relating to May children of opposite genders share a

bedroom?), except that nothing in this exception shall be construed to permit children from different families who are over the age of six and members of the opposite gender to share a bedroom.

(d) Limitation of exception. Notwithstanding subsection (c) of this section, and as further described in §745.8313 of this title (relating to Is a waiver or variance unconditional?), the department retains the authority for placing conditions on the scope of the exceptions authorized for a family residential center, including conditions related to limiting occupancy in accordance with fire safety standards, limitations related to allowing children and adults of the opposite gender to occupy the same room only if they are part of the same family, and any other limitation determined by the department to be necessary to the health, safety, or welfare of children in care.

(e) Division of responsibility. In addition to the application materials described in §745.243(6) of this title (relating to What does a completed application for a permit include?), an applicant for a license under this section must submit the policies, procedures, and any other documentation that the department deems necessary to clarify the division of supervisory and caretaking responsibility between employees of the facility and the parents and other adult family members who are housed with the children. The department must approve the documentation during the application process and any subsequent amendments to the policies and procedures.

(f) Applicability. This rule is applicable only to the extent that a GRO may provide care to children who are unlawfully present in the United States and in the custody of the federal government.

TITLE 26	HEALTH AND HUMAN SERVICES
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SUBCHAPTER B	DEFINITIONS AND SERVICES
DIVISION 3	CARE OF UNLAWFULLY PRESENT INDIVIDUALS

§748.81. What do certain terms mean in this division?

The terms used in this division have the following meanings:

(1) Exempt program--A child-care program that is exempt from or otherwise not subject to regulation as a child-care operation by the Texas Health and Human Services Commission (HHSC) under Chapter 42, Texas Human Resources Code (HRC), and Chapter 745, Subchapter C of this title (relating to Operations that are Exempt from Regulation).

(2) Unlawfully present individual--An individual who is neither a citizen nor has a right to be present in the United States under the Immigration and Nationality Act or accompanying regulations or decisions, who is in the custody of the federal government. This term includes a child who has no lawful immigration status in the United States and:

(A) With respect to whom, there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody, as described in 6 U.S. Code §279(g)(2); or

(B) Who is detained with a parent or other adult family member who is not lawfully present in the United States.

§748.83. May I provide care to or shelter an unlawfully present individual?

You may not provide care or shelter to an unlawfully present individual at your general residential operation. However, you may operate an exempt program that provides care for an unlawfully present individual separately from your general residential operation [Medium].

§748.85. What are the requirements if I operate my general residential operation while an exempt program separately provides care for an unlawfully present individual?

(a) If you provide care for an unlawfully present individual at an exempt program while you operate your general residential operation:

(1) You must notify Licensing in writing [Medium];

(2) You must ensure that the exempt program:

(A) Has separate caregivers from your operation or caregivers that do not provide care at your operation while they care for children at the exempt program [Medium]; and

(B) Does not use an area of your building or grounds at the same time that your operation is using the area, except that the exempt program and your operation may share restrooms and indoor and outdoor activity areas under a written plan regarding how caregivers from your operation and the exempt program will supervise the children in the shared space [Medium].

(b) You must submit to Licensing a written plan for how the exempt program will operate separately from your general residential operation, as required by subsection (a)(2) of this section [Medium].