

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 749 MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES
SUBCHAPTER B PURPOSE AND SCOPE
DIVISION 1 DEFINITIONS

§749.43. 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) 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, socio-cultural background, and community setting.

(3) Adoption record--All information received by the child-placing agency that bears the child's name or pertains to the child, including any information about the birth parents and adoptive parents, is considered to be part of the adoption record.

(4) Adoptive home screening--Also known as a pre-adoptive home screening. A written evaluation, prior to the placement of a child in an adoptive home, of the:

(A) Prospective adoptive parents;

(B) Family of the prospective adoptive parents; and

(C) Environment of the adoptive parents and their family in relation to their ability to meet the needs of a child, and if a child has been identified for adoption, the needs of that particular child.

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

(6) Adverse action--See corrective or adverse action.

(7) Babysitter--A person who temporarily cares for a child in foster care for no more than 12 consecutive hours. A babysitter is not required to meet the requirements for a caregiver unless the babysitter is a verified foster parent, an agency employee, a contract service provider, or a volunteer.

(8) Babysitting--Care provided by a babysitter.

(9) Caregiver--A caregiver:

(A) Is a person counted in the child/caregiver ratio for foster care services, including employees, foster parents, contract service providers, and volunteers, whose duties include direct care, supervision, guidance, and protection of a child in care. This includes any person who is solely responsible for a child in foster care. For example, a child-placement staff that takes a foster child on an appointment or doctor's visit is considered a caregiver;

(B) Does not include a babysitter, an overnight care provider, or a respite child-care provider unless the person is:

- (i) A verified foster parent;
- (ii) An agency employee;
- (iii) A contract service provider; or
- (iv) A volunteer.

(C) Does not include a contract service provider who:

- (i) Provides a specific type of service to your agency for a limited number of hours per week or month;
- (ii) Works with one particular child; or
- (iii) Is a nurse being reimbursed by Medicaid;

(D) Does not include a person left alone momentarily with a child in care while the caregiver leaves the room; and

(E) Does not include an adoptive parent.

(10) Certified fire inspector--Persons certified by the Texas Commission on Fire Protection to conduct fire inspections.

(11) 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.

(12) Child in care--A child who has been placed by a child-placing agency in a foster or adoptive home, regardless of whether the child is temporarily away from the home. Unless a child has been discharged from the child-placing agency, the child is considered a child in care.

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

(14) 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 §749.2605 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.

(15) 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.

(16) 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.

(17) Corrective or adverse action--Is any action by you that places a restriction or condition on a foster home's verification, including the revocation of the verification. Note: For information regarding a corrective or adverse action which Licensing is taking against you, see Subchapter L of Chapter 745 (relating to Enforcement Actions).

(18) 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.

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

(20) 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.

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

(22) 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.

(23) Emergency Behavior Intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(24) 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.

(25) 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 physical injury to the child because the child attempts or continually threatens to commit suicide or substantial physical injury; 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.

(26) 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 child-placing agency staff and any owner who is present at the operation or a foster home or transports any child in care.

(27) 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).

(28) Foster care--Care that is provided to a foster child by a foster family home.

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

(30) Foster home screening--A written evaluation, prior to the verification of the foster home, of the:

(A) Prospective foster parent(s);

(B) Family of the prospective foster parent(s);

(C) All other part- or full-time household members; and

(D) Environment of the foster parent(s) and their family in relation to their ability to meet the child's needs.

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

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

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

(34) Grounds--Includes any parcel of land where the foster home 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.

Technical Assistance

If the foster home has common areas of the property that are shared by other tenants (such as a parking lot, courtyard, swimming pool area, etc.), the foster home is not responsible for how common areas are maintained. However, the foster home is responsible for the safety of the children and the continuing supervision of the children.

(35) 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.

(36) High-risk behavior--Behavior of a child that creates an immediate safety risk to the child 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.

(37) 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.

(38) Immediate danger to self or others--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.

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

(40) Master record--The compilation of all required records for a specific person or home, such as a master personnel record, master case record for a child, or a master case record for a foster or adoptive home.

(41) Mechanical restraint--A prohibited 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.

(42) 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.

(43) 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.

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

(45) Normalcy--See §749.2601 of this chapter (relating to What is "normalcy"?).

(46) Overnight care--Care provided by an overnight care provider.

(47) Overnight care provider--A person who temporarily cares for a child in foster care for more than 12 consecutive hours, but no more than 72 consecutive hours.

(48) Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns a child-placing agency.

(49) 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.

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

(51) Permit holder--The owner of the child-placing agency that is granted the permit.

(52) 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.

(53) 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.

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

(55) Post-adoption services--Services available through the child-placing agency (direct or on referral) to birth and adoptive parents and the adoptive child after the adoption is consummated. Examples include counseling, maintaining a registry if a central registry is not used, providing pertinent, new medical information to birth or adoptive parents, or providing the adult adoptee a copy of his record upon request.

(56) Post-placement adoptive report--A written evaluation of the assessments and interviews, after the adoptive placement of the child, regarding the:

- (A) Child;
- (B) Prospective adoptive parent(s);
- (C) Family of the prospective adoptive parent(s);
- (D) Environment of the prospective adoptive parents and their family; and
- (E) Adjustment of all individuals to the placement.

(57) Pre-adoptive home screening--See adoptive home screening.

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

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

(60) Professional service provider--Refers to:

(A) A child placement management staff or person qualified to assist in child placing activity;

(B) A psychiatrist licensed by the Texas Medical Board;

(C) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

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

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

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

(G) 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; and

(H) Other professional employees in fields such as drug counseling, nursing, special education, vocational counseling, pastoral counseling, and education who may be included in the professional staffing plan for your agency that provides treatment services if the professional's responsibilities are appropriate to the scope of the agency's program description. These professionals must have the minimum qualifications generally recognized in the professional's area of specialization.

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

(62) 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.

(63) Re-evaluate--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.

(64) 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?).

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

(66) 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 labelling 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 labelling 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.

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

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

(69) 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.

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

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

(72) Single source continuum contractor--A child-placing agency that contracts with the Texas Department of Family and Protective Services to provide community-based care as described in Subchapter B-1, Chapter 264, Texas Family Code.

(73) 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.

(74) 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 may include the location or severity of the bodily harm or the 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.

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

(76) Supplement--Includes vitamins, herbs, and any supplement labeled dietary supplement.

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

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

(79) 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 Penal Code §20A.02 or §20A.03.

(80) 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.

(81) 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.

(82) Unsupervised childhood activities--Childhood activities that a child in care participates in away from the foster home and the foster parents. Childhood activities that the foster parents conduct or supervise or the child-placing agency sponsors 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.

(83) Volunteer--A person who provides:

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

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

(84) 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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SUBCHAPTER V ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES
THAT PROVIDE TRAFFICKING VICTIM SERVICES
DIVISION 2 POLICIES AND PROCEDURES

§749.4053. 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, caregivers, and employees, including measures that address both interior and exterior security while promoting a comfortable and nurturing environment **on the grounds of the foster home**;

(2) Foster parent protocols and procedures for ensuring a safe environment, including how to handle visitors not allowed at the foster home; 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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DIVISION 4 TRAINING

§749.4157. 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 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 a foster home, including the grounds of a foster home (e.g., high flight risk, potential self-harm, harm to others, internal recruitment, unapproved visitors, and intruders).