



Presentation to the Senate Special Committee on Child Protective Services

Cecile Erwin Young

Executive Commissioner,
Health and Human Services Commission

Jordan Dixon

Chief Policy and Regulatory Officer,
Health and Human Services Commission



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HHSC and DFPS Overview

Senate Bill 200, 84th Legislature, Regular Session, 2015

Directed the transfer of regulatory functions at the Department of Family and Protective Services (DFPS) to the Health and Human Services Commission (HHSC) by September 2017.

Senate Bill 11, 85th Legislature, Regular Session, 2017

Retained the investigation of abuse, neglect, and exploitation at childcare operations at DFPS.

House Bill 5, 85th Legislature, Regular Session, 2017

Removed DFPS from the health and human services system and made DFPS an independent agency. Transferred to DFPS responsibility for investigations of alleged abuse or neglect occurring at a child-care facility, including a residential childcare facility such as a general residential operation or child-placing agency.

Required DFPS to create certain divisions, including investigations, and authorized the creation of other divisions, as appropriate.





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HHSC Regulatory Authority

HHSC Child Care Regulation (CCR) licenses and regulates facilities in accordance with statute and regulatory standards set forth in the Texas Administrative Code (TAC).

Relevant state statutes:

- **Chapter 42 of the Texas Human Resources Code.** Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services
- **Chapter 43 of the Texas Human Resources Code.** Regulation of Child-Care and Child-Placing Agency Administrators
- **Section 411 of the Texas Government Code.** Department of Public Safety of the State of Texas. General Provisions and Administration
- **Section 531 of the Texas Government Code.** Health & Human Services Commission. General Provision, Organization of Commission

Relevant TAC Rules

- **Title 26. Part 1, Chapter 745:** Licensing, Background Checks
- **Title 26. Part 1, Chapter 748:** General Residential Operations
- **Title 26. Part 1, Chapter 749:** Child Placing Agencies
- **Title 40. Part 19, Chapter 745:** Licensing



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Residential Child Care Permits

- There are two permit types for residential childcare facilities:
- Child-Placing Agency (CPA)
 - This means a person, including an organization, other than the natural parents or guardian of a child, who plans for the placement of or places a child in a child-care facility, agency foster home, or adoptive home.
 - CPAs verify foster homes.
- General Residential Operation (GRO)
 - This means a childcare facility that provides care for seven or more children for 24 hours a day.
 - Emergency Shelters and Residential Treatment Centers (RTCs) are GROs that provide specific, specialized services.

Licensure Process

Application

Operation submits application for licensure, including all required documentation.

Upon receipt of the application, HHSC has 21 days to review and determine if the application is complete. The application may be returned for additional documentation.

Inspection

If the application is accepted, HHSC has 21 days to complete a comprehensive inspection to evaluate compliance with all required standards.

When an initial permit is issued, it is valid for six months. During the initial permit period, HHSC will conduct a minimum of three unannounced inspections to further determine compliance with minimum standards, administrative rules, and statutes.

Upon completion of that inspection, HHSC has two months to issue or deny an initial permit unless there is good cause to extend the timeframe. HHSC may deny an application for a permit if the operation fails to comply with minimum standards, administrative rules, or statutes.

Permit

HHSC may issue a second initial permit if additional time is necessary to determine a pattern of compliance also valid for six months. HHSC conducts at least three unannounced inspections during that timeframe.

If after the initial permit period(s), the operation has established continued compliance, HHSC may issue a full permit.

When an operation is issued a full permit, HHSC will conduct at least one inspection per year, in addition to any other inspections or investigations that may be necessary as a result of reports received.





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Criminal Background Check Requirements

A residential childcare operation is required to conduct background checks for each person employed or prospective employee of an operation prior to allowing an employee to be present at the operation. This background check includes:

- An FBI fingerprint criminal history check as well as a Central Registry check.
- An out-of-state abuse/neglect check and an out-of-state sex offender registry check in each state where the person has resided in the five years preceding the background check, or where there is an indication the person has history in other states.

When the residential childcare operation submits the background check, CCR's Criminal Background Check Unit (CBCU) uses the results of the background check to determine if specific history affects a person's ability to be present at an operation.

- 26 TAC §745.661 indicates which criminal convictions may affect a person's ability to be present at an operation, while 26 TAC §745.671 indicates which findings on the central registry may affect a person's ability to be present at an operation.
- CBCU uses those factors to determine if a person poses a risk or immediate threat to children.



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Ongoing Criminal Background Checks

In addition to initial background checks required prior to employment, renewals are also required as long as the person remains employed at a residential child care operation.

- **Employees of an operation:**
 - Renewal required every five years.
 - If fingerprinted after June 2015, employees are part of the national RAP BACK subscription, meaning that HHSC will be notified of any updates to existing criminal history and any new criminal history that occurs after the initial background check.
 - If fingerprinted before June 2015, employees must be fingerprinted again and will be added to the RAP BACK subscription upon their next renewal.
 - Annually, all residential operation employees are checked in the Central Registry.
- **Frequent visitors and volunteers:**
 - Renewal required every two years (DPS name-based background check; Central Registry).
 - Annually, all frequent visitors and volunteers are checked in the Central Registry.



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Regulatory Oversight

Licensed GROs and CPAs are required to comply with all state health and safety standards.

- State statute and agency rule direct HHSC to conduct comprehensive annual inspections of state-licensed operations.
- HHSC also investigates any reported violations of licensing standards and ensures state-licensed operations resolve deficiencies.
- During inspections and investigations, HHSC evaluates an operation's compliance with state standards. If an operation fails to meet the standards, HHSC cites a deficiency.
- Heightened Monitoring is an increased level of oversight for operations licensed by HHSC and contracted with DFPS and/or an Single Source Continuum Contractor (SSCC) that have a pattern of violations for 3 of the last 5 years.
- DFPS investigates allegations of abuse, neglect and exploitation at HHSC-licensed operations and identifies any concerns that may indicate standards violations observed during the course of those investigations.

CCR Complaint Intake

- The Statewide Intake (SWI) division of DFPS receives and routes to HHSC-CCR all reports that allege violations of CCR statute, administrative rules or minimum standards at residential childcare operations.
- DFPS investigates reports that contain an allegation of abuse, neglect, or exploitation in residential childcare operations.
- CCR investigates the report if the report does **not** contain an allegation of abuse, neglect, or exploitation or the death of a child, but does contain an allegation involving:
 - A violation of CCR statute, administrative rules, or regulatory standards;
 - A person or operation that is subject to regulation providing care to children without the proper permit, unless the location of the operation is unknown;
 - An operation with a permit providing care to more children than authorized by the permit; or
 - There is an immediate risk of danger to the health or safety of children.



Enforcement

At the conclusion of an inspection or investigation, the operation is informed of any deficiencies cited, the level of severity of the deficiency, and how long the operation has to correct the deficiency.

Depending on severity of the deficiency, the inspector follows up in 15-30 days.

Enforcement Actions

- Voluntary Plan of Action
- Probation
- Denial
- Involuntary Suspension
- Revocation
- Adverse Amendment

Administrative Penalties

Due Process

- Administrative Review
- SOAH Hearing (only for adverse actions or when administrative penalties are assessed)



Compliance Trends in Congregate Care

In the past two years (Feb 20-Feb 22), HHSC cited 8,457 deficiencies in residential childcare operations:

Types	Total Deficiencies	High Weighted Deficiencies	# Operations Cited	Avg Deficiencies per operation
CPAs	4,546	1,610	325	13.99
GROs	2,067	505	152	13.6
RTCs	1,849	561	74	24.92

Five Most Common Standards Cited:

(1) Failure to provide the level of supervision necessary to ensure children's safety and well being; (2) Failure to ensure children's right to be free of abuse, neglect and exploitation; (3) Failure of an employee to demonstrate competence, prudent judgement, and self-control in the presence of children and when performing assigned tasks; (4) Failure to ensure the physical site is structurally sound, clean and in good repair; and (5) Failure to ensure medication records include accurate daily count of each prescribed medication.

Revocations, Suspensions and Denials: 15 (FY 20-FY 22 YTD)

Administrative Penalties: 68 (Feb 21-Feb 22)

Current # Operations on Probation: 16

Current # Operations on Heightened Monitoring: 75 (16 in Post-plan monitoring)



The Refuge: Compliance History

Initial Inspection: 7/2/2018

Full Permit Issued: 2/1/2019

Since initial inspection: 42 deficiencies cited by HHSC-CCR*

Category of Deficiency	# of Deficiencies
Admissions, Service Planning and Discharge	4
Background Checks	6
Child Care	4
Child/Caregiver Ratios	2
Children's Rights	3
Emergency Behavior Intervention	2
Medication	5
Personnel	9
Physical Site	3
Reports and Record Keeping	3
Safety and Emergency Practices	1

*HHSC-CCR continues to examine potential deficiencies based on available information.

