



Updated Guidance on the Governor's Disaster Proclamation

Background:

On May 31, 2021, Governor Abbott issued a proclamation declaring a disaster in the state of Texas due to individuals unlawfully crossing the Texas-Mexico border. The proclamation directs the Health and Human Services Commission (HHSC) to discontinue state licensing of any child-care facility that shelters or detains unlawfully present individuals.

Who is considered an unlawfully present individual?

An unlawfully present individual is an individual not lawfully present in the United States who is in the custody of the federal government. This term does not include participants in a federal unaccompanied refugee minor program.

What is a "GRO permit"?

A "GRO permit" is a license or certification that HHSC issues under Chapter 42 of the Human Resources Code for the operation of a General Residential Operation (GRO).

What residential child-care operations are subject to the proclamation?

The proclamation applies to GROs. After August 30, 2021, a GRO may not provide care to or shelter an unlawfully present individual under its GRO permit.

The proclamation does not apply to child-care programs that are exempt from or otherwise not subject to regulation by HHSC. A program that provides 24-hour care exclusively to one or more individuals not lawfully present in the United States who are in the custody of the federal government is an exempt program, as provided by 26 TAC 745.115.

The proclamation does not apply to child-placing agencies.

What do I need to do?

If your GRO provides care to unlawfully present individuals, by July 31, 2021, you must notify HHSC Child Care Regulation (CCR) in writing whether your GRO will continue providing care to unlawfully present individuals after August 30, 2021. Your notification must include written information about your plan for the care of unlawfully present individuals. You send your written notification to RCCRStan@hhs.texas.gov.

What are my options for providing care to unlawfully present individuals after August 30, 2021?

After August 30, 2021, a GRO cannot care for unlawfully present individuals under its GRO permit. However, you may be able to provide care for unlawfully present individuals at an exempt program. Accordingly, if you hold a GRO permit and want to provide care for an unlawfully present individual after that date, you may:

1. Relinquish your GRO permit prior to August 30, 2021, and operate solely as a program that is exempt from or otherwise not subject to regulation; or
2. Continue to operate as a GRO and provide care for the unlawfully present individual in a separately operated program that is exempt from or otherwise not subject to regulation.

Will I need to submit an exemption form for a program that provides care to unlawfully present individuals after August 30, 2021?

No, your written notification to RCCRStan@hhs.texas.gov is the record of your intention to operate an exempt program that provides care to unlawfully present individuals.

How may I operate my GRO and an exempt program that provides care to unlawfully present individuals without jeopardizing my GRO permit?

You must be able to demonstrate that the GRO and the exempt program are separate. No later than July 31, 2021, you must provide CCR a written plan that outlines your plans for operating the GRO and exempt program separately, which must include that the exempt program:

- (1) Has separate caregivers from the GRO or has caregivers that do not provide care at the GRO while caring for children at the exempt program that is not subject to regulation; and

- (2) Does not use an area of the GRO's building or grounds at the same time as the GRO is using the area. The GRO and exempt program may share restrooms and indoor/outdoor activity areas. In addition, the plan must include how each population will be supervised when using shared space, such as, restrooms and indoor/outdoor activity areas.

How may I retain my GRO permit?

You may retain your GRO permit if you don't provide care to any unlawfully present individual under your GRO permit. Of course, all GROs must continue to meet the other legal and regulatory requirements, including those requirements in Chapter 42 of the Human Resources Code, the minimum standards in 26 Texas Administrative Code Chapter 748, and other relevant administrative rules.

May I care for unlawfully present individuals under my GRO permit after August 30, 2021?

You may not care for an unlawfully present individual under your GRO permit after August 30, 2021. You may care for an unlawfully present individual at an exempt program that is sufficiently separated from your GRO.

Do I need to relinquish my GRO permit?

If you plan to provide care only to unlawfully present individuals after August 30, 2021, you may relinquish your GRO permit before that date. Otherwise, HHSC will seek probation or revocation of your GRO permit if you continue to provide care to an unlawfully present individual under your GRO permit after that date.

What happens if I provide care to unlawfully present individuals after August 30, 2021?

If you have relinquished your GRO permit, you may be able to continue to provide care to unlawfully present individuals as an exempt program.

If you have not relinquished your GRO permit and seek to provide care to unlawfully present individuals at an exempt program, you will have to demonstrate sufficient separation between the GRO and the exempt program. HHSC will place your GRO permit on probation if we determine you are providing care to unlawfully present individuals under your GRO permit after August 30, 2021. If the operation does not meet all requirements of the probation within the first 30 days of the probationary period, HHSC will seek revocation or refuse to renew the GRO's license or certification. Even if you have an exempt program for the care of unlawfully present individuals, HHSC will consider that care to be under your GRO permit if the program is not sufficiently separate from the GRO.

When will HHSC revoke or refuse to renew my GRO permit?

HHSC will revoke or refuse to renew your GRO permit if we determine you are continuing to provide care to unlawfully present individuals under your GRO permit and do not meet all requirements of the probation within the first 30 days of the probationary period.

Can I submit a variance to serve an unlawfully present individual?

No, a GRO cannot care for an unlawfully present individual under its GRO permit. A waiver or variance only applies to an operation's ability to meet a specific minimum standard in 26 Texas Administrative Code chapter 748.