



## Child Care Regulation Operation Action Letter

<b>Number:</b> 2023-01
<b>Title:</b> Immunization Exemption Requirements in Texas Human Resources Code §42.043
<b>Operation Types:</b> Licensed Child-Care Centers, School-Age and Before or After-School Programs, Licensed Child-Care Homes, and Registered Child-Care Homes
<b>Publication Date:</b> June 27, 2023

### 1.0 Subject and Purpose

This letter describes how HHSC will ensure compliance with immunization exemption requirements listed in [Human Resources Code §42.043\(d\)](#), pertaining to immunization exemptions for children being admitted into a child care facility.

Human Resources Code §42.043(d) prohibits a child care facility from requiring immunizations as a condition of child admission into the child care program when one of the following affidavits is submitted:

- Affidavit signed by a physician stating that the immunization poses a significant risk to the child or a member of the child's family or household; or
- Affidavit signed by the parent or guardian stating the immunization is declined for reasons of conscience, as outlined in [Health and Safety Code §161.0041](#).

### 2.0 Details and Provider Responsibilities

A child care facility may not deny admission to a child based solely on the fact that the child has a reason of conscience exemption affidavit or a documented medical exemption for vaccine requirements. Child care facilities whose admission policies and procedures fail to meet this statutory requirement will be in violation of Minimum Standards.

### 3.0 Background/History

HHSC is issuing this letter to clarify previous misapplication of the statute. HHSC previously looked to [Attorney General Opinion GA-0420](#) to obtain guidance on this topic. The summary of this opinion states "A private school that does not accept state tax funds is not required to accept for enrollment a child who received an exemption from the immunizations required by the Texas Health and Safety Code." However, a footnote in this opinion indicates that the opinion does not address the applicability of Human Resources Code §42.043. Accordingly, HHSC was erroneous in applying this opinion to child care facilities.

### 4.0 Resources

- [Human Resources Code §42.043\(d\)](#)
- [Health and Safety Code §161.0041](#)
- [Attorney General Opinion GA-0420](#)
- Relevant Minimum Standards:
  - School-Age and Before or After-School Programs: [§744.613](#) and [§744.615](#)
  - Licensed Child Care Centers: [§746.613](#) and [§746.615](#)
  - Registered and Licensed Child Care Homes: [§747.613](#) and [§747.615](#)

### 5.0 Contact Information

If you have any questions about this letter, please contact [msc@hhs.texas.gov](mailto:msc@hhs.texas.gov).