

Note: Effective August 23, 2023, the below rules in Title 40, Chapter 745, Subchapter K, Inspections and Investigations, were deleted and replaced with new rules in Title 26, Chapter 745, Subchapter B, Child Care and Other Operations that We Regulate; Subchapter I, Non-Enforcement Voluntary Actions; and Subchapter K, Inspections, Investigations, and Confidentiality. As of August 23, 2023, Child Care Regulation no longer has any rules located in Title 40. All of the Child Care Regulation rules are now located in Title 26.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 19 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
[CHAPTER 745 LICENSING
SUBCHAPTER K INSPECTIONS AND INVESTIGATIONS
DIVISION 1 OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

~~§745.8401. Who has the right to conduct an inspection or investigation?~~

~~An authorized representative of Licensing may inspect, investigate, and/or evaluate an operation during the hours of operation.~~

~~§745.8403. What is the purpose of an inspection?~~

~~The purpose of an inspection is to:~~

- ~~—(1) Verify compliance with licensing statutes, rules, and minimum standards;~~
- ~~—(2) Assess the risk to children in facilities;~~
- ~~—(3) Evaluate whether the operation is subject to regulation;~~
- ~~—(4) Assist the provider in identifying problems contributing to violations of licensing statutes, rules, and minimum standards;~~
- ~~—(5) Offer technical assistance; and~~
- ~~—(6) Gather information as part of an investigation.~~

~~§745.8405. What is the purpose of an investigation?~~

~~The purpose of an investigation is to:~~

- ~~—(1) Reduce the risk of abuse and neglect to children and to protect them in out-of-home care; and~~
- ~~—(2) Obtain sufficient information to make a fair, accurate, and impartial decision regarding the report, allegation, situation, and/or conditions.~~

~~§745.8407. When will Licensing inspect and/or investigate an operation?~~

~~Please refer to the following chart:~~

Figure: 40 TAC §745.8407

Type of Operation	Inspection	Investigation
(1) Listed Operation	<ul style="list-style-type: none"> • We do not conduct routine inspections. • We may inspect your operation as part of an investigation. • We may inspect your operation to ensure that you are providing care within the limits of the permit issued to you. 	<p>We investigate when we have received a report:</p> <ul style="list-style-type: none"> • Of abuse or neglect; • Of an immediate risk to the health or safety of a child being cared for in the home; • That the home administered a medication to a child in violation of Human Resources Code, §42.065; or • That the home is caring or receiving compensation for four or more unrelated children.
(2) Registered Operation	<p>We inspect:</p> <ul style="list-style-type: none"> • At least once every three years after the issuance of the registration; and • As part of an investigation. 	<p>We investigate when we have received a report of:</p> <ul style="list-style-type: none"> • Alleged abuse or neglect; or • A deficiency in a licensing statute, rule, or minimum standard.
(3) Licensed or Certified Operation	<p>We inspect:</p> <ul style="list-style-type: none"> • Prior to the issuance of the license or certification; • At least once every year; and • As part of an investigation. 	<p>We investigate when we have received a report of:</p> <ul style="list-style-type: none"> • Alleged abuse or neglect; or • A deficiency in a licensing statute, rule, or minimum standard.
(4) Agency foster and foster group home	<ul style="list-style-type: none"> • We will periodically inspect a random sample of agency foster homes and agency group homes. 	<p>We investigate when we have received a report of:</p> <ul style="list-style-type: none"> • Alleged abuse or neglect; or • Pertaining to a child under six years: <ul style="list-style-type: none"> — A reportable serious incident; — A deficiency in a minimum standard that is weighted high; or — A deficiency in a licensing statute, rule, or

Figure: 40 TAC §745.8407

Type of Operation	Inspection	Investigation
		<p>minimum standard that is prioritized by DFPS with a high degree of risk.</p> <ul style="list-style-type: none"> • Other deficiencies in a licensing statute, rule, or minimum standard are investigated by the child-placing agency.
(5) Employer-Based Child Care	<p>We inspect:</p> <ul style="list-style-type: none"> • Prior to the issuance of the compliance certificate; and • As part of the investigation. 	<p>We investigate when we have received a report of:</p> <ul style="list-style-type: none"> • Alleged abuse or neglect; or • A deficiency in a licensing statute or rule.
(6) Shelter Care	<p>We inspect:</p> <ul style="list-style-type: none"> • Prior to the issuance of the compliance certificate; and • As part of an investigation. 	<p>We investigate when we have received a report of:</p> <ul style="list-style-type: none"> • Alleged abuse or neglect; or • A deficiency in a Licensing statute or rule.

§745.8409. How often may Licensing inspect or investigate my operation?

We may inspect or investigate as often as is necessary to verify compliance with the statutes, rules, and minimum standards or complete the investigation.

§745.8411. Are inspections and investigations announced or unannounced?

(a) For registered child care homes, one inspection every three years must be unannounced.

(b) For licensed or certified operations, one inspection every year must be unannounced.

(c) All other inspections and investigations may be announced or unannounced. Investigations of abuse and/or neglect are usually unannounced.

§745.8413. Must I allow Licensing to inspect and/or investigate my operation?

Yes, all operations, whether regulated or not, must admit us and not delay or prevent us from making inspections or conducting investigations during the hours of operation.

§745.8415. What can Licensing inspect and/or investigate?

~~We may investigate any part of your operation that could affect the health, safety, or well being of children. This includes, but is not limited to, access to all children in care, employees, records, and any area of the building, home, or grounds where your operation is located.~~

~~§745.8417. Can Licensing read all of the records during an inspection or investigation?~~

~~Yes, we must have access to all records. We will then select the ones to be read.~~

~~§745.8419. Can Licensing staff take copies of records from my operation?~~

~~Yes. Our staff may take copies of records from your operation, including child records and personnel records.~~

~~§745.8421. Will Licensing investigate anonymous reports?~~

~~(a) We will evaluate an anonymous report regarding standard violations that does not contain allegations that the health or safety of children is at risk to discern whether the allegations have a factual basis. To evaluate the report, we may check the operation's compliance history for similar allegations and/or deficiencies, and call the operation and/or collaterals. If there appears to be a factual basis for the allegations, the investigation will proceed to determine the actual findings. If there does not appear to be a factual basis for the allegations, the investigation will not proceed.~~

~~(b) We will investigate an anonymous report alleging abuse or neglect.~~

~~§745.8423. Will the findings of an anonymous report be posted on the Department's Internet website, Search Texas Child Care?~~

~~(a) If we determine the allegations of an anonymous report to be false or lack factual foundation, we will not post the information concerning the report on the Department's Internet website.~~

~~(b) We will post any deficiency found during an investigation inspection that is not related to the allegations on the website as a deficiency found during an inspection.~~

~~§745.8425. What will happen if I do not allow Licensing to inspect and/or investigate all areas of my operation?~~

~~We may take remedial action as specified in Subchapter L of this chapter (relating to Remedial Actions), if you refuse, prevent, or delay our ability to conduct an inspection and/or investigation.~~

~~§745.8427. What are the expectations for a listed family home?~~

~~A listed family home must:~~

~~—(1) Operate within the limits of its permit;~~

~~—(2) Ensure that each child is free from abuse, neglect, and exploitation while in care;~~

~~—(3) Ensure that there is no immediate risk to the health or safety of a child while in care;~~

~~—(4) Ensure that any medication given to a child in care is administered according to §42.065 of the Human Resources Code;~~

~~—(5) Request background checks as required in Subchapter F of this chapter (relating to Background Checks);~~

~~—(6) Pay all required fees as outlined in Subchapter E of this chapter (relating to Fees); and~~

~~—(7) Comply with all other applicable rule and law.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 19 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
~~[CHAPTER 745 LICENSING~~
~~SUBCHAPTER K INSPECTIONS AND INVESTIGATIONS~~
~~DIVISION 2 NOTIFICATION~~

~~§745.8441. How will Licensing notify me of the purpose of an unannounced inspection or investigation?~~

~~(a) For routine inspections, we will notify the person in charge of the operation at the time of the inspection.~~

~~(b) For investigations of a report, we will notify the person in charge of the operation of the investigation procedures and the nature of the allegation(s) made in the report. We do not have to explain the nature of the allegation(s) if:~~

~~—(1) The allegation is made against the person in charge, administrator, or director; or~~

~~—(2) There is reason to believe that disclosing the nature of the allegation(s) might compromise the investigation.~~

~~§745.8443. If Licensing does not notify my operation of the nature of the allegation during an investigation, to whom will Licensing convey this information?~~

~~We must inform the applicant or permit holder of the nature of the allegation(s) by the next workday following the first on-site investigation unless we have reason to believe that the investigation may be compromised. If we believe the investigation may be compromised, the investigator may postpone explaining the nature of the allegation(s). We must inform the appropriate person(s) of the nature of the allegation(s) as soon as we decide that our doing so will not compromise the investigation.~~

~~§745.8445. Whom will Licensing inform of the inspection and/or investigation results?~~

~~(a) Once the inspection and/or investigation is complete, we will notify, in writing, the person in charge or director, and the applicant, permit holder, board chair, or designee of the outcome of the inspection and/or investigation.~~

~~(b) We will also notify whoever made the report, unless:~~

~~—(1) The reporter has indicated that he does not want to be notified;~~

~~—(2) We have determined that there is a reasonable likelihood that notifying the reporter will jeopardize the reporter's safety; or~~

~~—(3) The reporter will receive notice in another capacity pursuant to subsection (a) of this section.~~

~~§745.8447. What will the notification include?~~

~~(a) The notification of the results of the inspection and/or investigation to the person in charge or director, and the applicant, permit holder, board chair, or designee will include:~~

~~—(1) Specifics of the deficiency;~~

~~—(2) Corrections necessary for compliance;~~

~~—(3) Date by which you must comply; and~~

~~—(4) Your right to an administrative review to dispute the findings.~~

~~(b) The notification of the results sent to the reporter will include whether we found violations of rule or law as a result of the investigation and a reference to the Child-Care Licensing website.~~

~~§745.8449. What must I do if Licensing notifies me of a deficiency?~~

~~You must correct all deficiencies and meet all minimum standards within the specified timeframe. To dispute a finding, you may request an administrative review.~~

~~§745.8451. Who notifies parents an investigator interviewed their child during an abuse/neglect investigation?~~

~~(a) During an abuse or neglect investigation, we will make a reasonable effort to notify the parents within 24 hours after we interview and/or examine their child.~~

~~(b) If PRS determines the abuse or neglect occurred in the child's own home, then PRS will inform the parents.~~

~~(c) If we determine abuse or neglect occurred at your operation, we will notify or instruct your operation to notify the victim's parents of our determination.~~

~~(d) If we determine abuse or neglect occurred at your operation, we may instruct you to notify the parents of all children in your care that abuse or neglect has occurred in your operation.~~

~~§745.8453. If Licensing instructs me to notify a parent that his child was a victim of abuse or neglect or all parents that child abuse or neglect occurred in my operation, what information must I give to the parents and when?~~

~~You must give the parents the circumstances, conditions, and/or information necessary to make decisions about the treatment of their own children within 24 hours after we instruct you to notify the parents. You must document all notifications.~~

~~§745.8455. Can PRS hold me responsible for abuse without identifying me as the perpetrator?~~

~~We may hold you responsible if you are an administrator, director, or other employee and evidence indicates that you:~~

~~—(1) Were aware of the abuse or the genuine threat of substantial harm to a child; and~~

~~—(2) Did not act to prevent the abuse or threat.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 19 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
~~[CHAPTER 745 LICENSING~~
~~SUBCHAPTER K INSPECTIONS AND INVESTIGATIONS~~
~~DIVISION 3 CONFIDENTIALITY~~

~~§745.8481. Is information in my operation's monitoring file confidential?~~

~~(a) No, information in your operation's monitoring file is, for the most part, available to the general public.~~

~~(b) We will not release some information in your operation's monitoring file because of other state and federal laws that make the information confidential, as provided in §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?).~~

~~§745.8483. Will you tell me who made the report that resulted in the investigation of my operation?~~

~~No, the name of the person who made the report is confidential.~~

~~§745.8485. Are investigations confidential?~~

~~(a) All investigations are confidential until we complete the investigation and make a finding.~~

~~(b) Completed investigations that do not involve abuse or neglect become part of the operation's monitoring file, which is, for the most part, available to the general public, as provided in §745.8481 of this title (relating to Is information in my operation's monitoring file confidential?).~~

~~(c) Completed investigations of child abuse or neglect are confidential and not available to the general public, except as provided under this chapter and applicable federal or state law.~~

~~(d) Records related to a child fatality that is the subject of an investigation may be released to the general public as provided under Subchapter D, Release of Records Related to a Child Fatality, in Chapter 702 of this title (relating to General Administration).~~

~~§745.8487. What information can Licensing release to the public after the completion of the abuse or neglect investigation?~~

~~(a) We may release to the public only those portions of the abuse or neglect investigation record that we must file in the operation's monitoring file under §745.8489 of this title (relating to What portions of the child abuse or neglect investigation must Licensing keep in the operation's monitoring file?).~~

~~(b) Before releasing portions of the abuse or neglect investigation that are in the operation's monitoring file, we must remove:~~

- ~~—(1) The identity of any alleged victims or their families;~~
- ~~—(2) The identity of any other children involved in the investigation;~~
- ~~—(3) The identity of the reporter;~~
- ~~—(4) The identity of the alleged perpetrator;~~
- ~~—(5) The identity of any other individual whose life or safety might be endangered by the release; and~~
- ~~—(6) Any other information that may not be released under §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?);~~

~~§745.8489. What portions of the child abuse or neglect investigation must Licensing keep in the operation's monitoring file?~~

~~We will maintain all records of an abuse or neglect investigation separate from an operation's monitoring file except the following:~~

- ~~—(1) A statement regarding the nature of the abuse or neglect allegation that was investigated;~~
- ~~—(2) A copy of any written notices sent to the operation under §745.8445 of this title (relating to Whom will Licensing inform of the inspection and/or investigation results?);~~
- ~~—(3) A copy of the written notice that we mailed to you relating the finding of the investigation;~~
- ~~—(4) A copy of any recommendations for disposition resulting from the investigation and subsequent correspondence relating to that disposition;~~
- ~~—(5) Documentation of any monitoring inspections which may have taken place during the investigation into alleged child abuse or neglect; and~~
- ~~—(6) Documentation of your receipt of any of the above notices or documents.~~

~~§745.8491. Who can obtain information from the confidential portions of an abuse or neglect investigation file?~~

~~(a) The following may obtain information from the confidential portions of an abuse or neglect investigation file, subject to the limitations described in §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?):~~

- ~~—(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;~~
 - ~~—(2) The parent of the child who is the subject of the investigation or the alleged perpetrator in the investigation;~~
 - ~~—(3) An attorney ad litem, guardian ad litem, or court appointed special advocate of an alleged victim of child abuse or neglect;~~
 - ~~—(4) The alleged perpetrator;~~
 - ~~—(5) Law enforcement;~~
 - ~~—(6) A member of the state legislature when necessary to carry out that member's official duties;~~
 - ~~—(7) An operation cited for a deficiency as a result of the investigation;~~
 - ~~—(8) With a signed release from the operation, a single source continuum contractor (SSCC) for foster care redesign that subcontracts with the operation that is cited for a deficiency as a result of the investigation;~~
 - ~~—(9) An administrative law judge, or a judge of a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse or neglect, if he:~~
 - ~~—(A) Provides notice to DFPS and any other interested parties;~~
 - ~~—(B) After reviewing the information, including audio and/or videotapes, determines that the disclosure is essential to the administration of justice and will not endanger the life or safety of any individual; and~~
 - ~~—(C) Includes in his disclosure order any safeguards that the court finds appropriate to protect the interest of the child involved in the investigation;~~
 - ~~—(10) According to the Texas Family Code §162.006, a prospective adoptive parent of the child who is the subject of the investigation or who is the alleged perpetrator in the investigation; and~~
 - ~~—(11) A child welfare agency from another state that is requesting the information to assist in its own child abuse or neglect investigation.~~
- ~~(b) Notwithstanding any other provision of this section, the parent of a child who is not the subject of or the alleged perpetrator in the investigation but was a collateral witness during the investigation is entitled to the portion of the investigation record related to their child.~~
- ~~(c) A social study evaluator may obtain a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study, as provided by Texas Family Code §107.05145.~~

~~§745.8493. Are there any portions of Licensing records that Licensing may not release to anyone?~~

~~(a) We may not release the following portions of Licensing records to anyone:~~

~~—(1) Any information that would interfere with an ongoing law enforcement investigation or prosecution;~~

~~—(2) Any information identifying the person who made a report that resulted in an investigation;~~

~~—(3) The location of a family violence shelter;~~

~~—(4) Information pertaining to an individual who was provided family violence services;~~

~~—(5) The location of a victims of trafficking shelter center;~~

~~—(6) Information pertaining to an individual who was provided services at a victims of trafficking shelter center;~~

~~—(7) The identity of any child or information identifying the child in an abuse or neglect investigation, unless the requestor is:~~

~~—(A) The child's parent or prospective adoptive parent;~~

~~—(B) The operation that was cited for a deficiency as a result of the investigation; or~~

~~—(C) The single source continuum contractor (SSCC) for foster care redesign when:~~

~~—(i) The SSCC subcontracts with the operation;~~

~~—(ii) The operation has signed a release of information; and~~

~~—(iii) The operation was cited for a deficiency as a result of the investigation;~~

~~—(8) Foster home screenings, adoptive home screenings, and post-placement adoptive reports, unless:~~

~~—(A) The requester is the person being evaluated; or~~

~~—(B) The DFPS Commissioner approves the release of a screening or report based on a determination that, in the Commissioner's discretion, the release advances the goals of child protection; and~~

~~—(9) Any other information confidential under state or federal law.~~

~~(b) Notwithstanding any other provision in this section, DFPS may provide any of the above confidential information to the following parties in the relevant situations:~~

~~—(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;~~

~~—(2) Law enforcement for the purpose of investigating allegations of child abuse or neglect or false or malicious reporting of alleged child abuse or neglect;~~

~~—(3) A member of the state legislature when necessary to carry out that member's official duties;~~

~~—(4) Any other individuals ordered by an administrative law judge or judge of a court of competent jurisdiction; and~~

~~—(5) A social study evaluator who has requested a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study, as provided by Texas Family Code §107.05145.~~

~~(c) Notwithstanding any other provision in this chapter, CCL staff, in consultation with the Office of the General Counsel, may withhold any information in its records if the release of that information would endanger the life or safety of any individual.~~

~~§745.8495. Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?~~

~~(a) We may provide a copy of a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records to any of the following:~~

~~—(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;~~

~~—(2) Law enforcement for the purpose of investigating allegations of child abuse or neglect, failure to report child abuse or neglect, or false or malicious reporting of alleged child abuse or neglect;~~

~~—(3) An administrative law judge or a judge of a court of competent jurisdiction in a criminal or civil case to which the inspection or investigation is relevant;~~

~~—(4) The parent of the child; and~~

~~—(5) Any other person authorized by state or federal law to have a copy.~~

~~(b) The following persons may review a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records, but may not have a copy:~~

~~—(1) An attorney ad litem, guardian ad litem, or court appointed special advocate of the child;~~

~~—(2) The operation cited for a deficiency as a result of the inspection or investigation during which the photograph was taken or the audio or visual recording, depiction, or documentation was made;~~

~~—(3) The alleged perpetrator of an abuse or neglect investigation during which the photograph was taken or the audio or visual recording, depiction, or documentation was made to support or verify the abuse or neglect finding;~~

~~—(4) With a signed release from the operation, a single source continuum contractor (SSCC) for foster care redesign that subcontracts with the operation; and~~

~~—(5) A prospective adoptive parent of the child, as provided in Texas Family Code §162.006.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
 PART 19 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
~~[CHAPTER 745 LICENSING
 SUBCHAPTER K INSPECTIONS AND INVESTIGATIONS
 DIVISION 4 VOLUNTARY ACTIONS~~

~~§745.8511. What are the different types of voluntary actions that an operation may take?~~

~~The following chart lists the types of voluntary actions:-~~

~~Figure: 40 TAC §745.8511~~

Voluntary Actions	Description of Voluntary Action-
(1) Withdrawal of Application	You may choose to close or not open your operation after you apply for a permit, but before a decision is made to deny or issue the permit.
(2) Temporary Relocation	You relocate your operation for a period of up to 90 days due to damage or renovation to the building, which makes it temporarily unsuitable for child care.
(3) Voluntary Suspension	You request a suspension of your permit for a specific time and for specific reasons.
(4) Voluntary Closure	You close your operation after a permit has been issued.

~~§745.8513. Must Licensing approve all voluntary actions?~~

~~Yes, Licensing must review and approve all voluntary actions.-~~

~~§745.8515. Can I prevent Licensing from taking a corrective or adverse action by taking a voluntary action?~~

~~We may impose a remedy against you even though you have taken a voluntary action to remedy the violation. We may impose the remedy while you are taking the voluntary action. If your action is voluntary closure or suspension, then we may impose the remedy when you reopen your operation. We may also determine that a remedy is unnecessary because of your voluntary action.-~~

~~§745.8517. What must I do when I temporarily relocate my operation because of damage or renovation?~~

~~You must do the following when you temporarily relocate your operation:-~~

- ~~—(1) Notify us immediately when you move your operation to a new location;~~
- ~~—(2) Obtain fire, sanitation, and gas pipe pressure test inspections of the temporary location prior to or as soon as possible after the relocation; and~~
- ~~—(3) Obtain our approval for any aspect of the temporary location that does not comply with standards.~~

~~§745.8519. Can I voluntarily suspend my permit?~~

~~Yes, you may request a voluntary suspension of your permit for the following reasons:~~

- ~~—(1) You are repairing or making changes to your operation or family home;~~
- ~~—(2) You do not have children in care;~~
- ~~—(3) You or the caregiver are ill;~~
- ~~—(4) You or the caregiver are absent for an extended length of time; or~~
- ~~—(5) You or the caregiver have personal reasons to suspend the permit.~~

~~§745.8521. How long can I voluntarily suspend my permit?~~

- ~~(a) If you are registered or licensed to provide child day care, then you can request suspension of your registration or full license for a maximum of 90 days.~~
- ~~(b) If you are licensed to provide residential child care, then you can request a suspension of your license for a maximum of two years.~~
- ~~(c) If your permit is due for renewal while it is voluntarily suspended, you must apply to renew the permit so that it does not expire.~~

~~§745.8523. How do I request voluntary suspension?~~

~~You must submit a written request for voluntary suspension to your Licensing representative. In your request, you must include:~~

- ~~—(1) The reason you are requesting voluntary suspension;~~
- ~~—(2) Proposed dates for the suspension to begin and end;~~
- ~~—(3) Plans for resuming operation; and~~
- ~~—(4) A statement about how you will meet the standards at the end of the suspension period.~~

~~§745.8525. Will Licensing automatically grant me a properly requested voluntary suspension?~~

~~No, we may approve, deny, or add conditions to your request for voluntary suspension. We will not approve a voluntary suspension if you are involved in a remedial action for a suspension, probation, or revocation. If we do not approve your request, you have a right to an administrative review.~~

~~§745.8527. What are my responsibilities during the voluntary suspension period?~~

~~During the voluntary suspension period, you must:~~

- ~~—(1) Notify the parents of the suspension;~~
- ~~—(2) Not have children in care;~~
- ~~—(3) Notify us at least 15 days before resuming operation;~~
- ~~—(4) Return the permit to us during the suspension period; and~~
- ~~—(5) Remit all fees due during the suspension period.~~

~~§745.8529. How do I resume operation at the end of the voluntary suspension period?~~

~~You cannot reopen without our approval. You must give us at least 15 days notice before resuming operation. We will give you permission to reopen your operation after we determine that you are meeting applicable standards.~~

~~§745.8531. What if I do not resume operation at the end of the voluntary suspension period?~~

~~You must close your operation. Your permit will no longer be valid if you have not resumed operations with our approval at the end of the voluntary suspension period. We will notify you that your permit is revoked and inform you of your rights to an administrative review.~~

~~§745.8533. What if I intend to voluntarily close my operation?~~

~~You should notify us before you close. If that is not possible, you must notify us within ten days after closing.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 19 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
[CHAPTER 745 LICENSING
SUBCHAPTER K INSPECTIONS AND INVESTIGATIONS
DIVISION 5 ABUSE AND NEGLECT

~~§745.8551. What is the purpose of this division?~~

~~The purpose of this division is to further describe the definitions of abuse, neglect, and exploitation by persons who work under the auspices of an operation, as found in Texas Family Code, Chapter 261, Subchapter E, §261.401.~~

~~§745.8553. Who works "under the auspices of an operation"?~~

~~The following persons work under the auspices of an operation:-~~

- ~~—(1) Any employee or volunteer of the operation;~~
- ~~—(2) Any person under contract with the operation;~~
- ~~—(3) A director, owner, operator, or administrator of an operation;~~
- ~~—(4) Anyone who has responsibility for the children in care;~~
- ~~—(5) Anyone who has unsupervised access to the children in care;~~
- ~~—(6) Anyone who regularly or routinely lives at the operation; and~~
- ~~—(7) Any other person permitted by act or omission to have access to children in care.~~

~~§745.8555. What do the following words mean when Licensing investigates abuse, neglect, or exploitation?~~

~~(a) Emotional harm—An observable impairment in a child's psychological growth, development, or functioning. Emotional harm is any significant change in a child's physical health or social behavior, including changes in sleeping and eating patterns. Emotional harm also includes any "substantial emotional harm." A mental health professional does not have to determine that there is emotional harm.~~

~~(b) Intentional, knowing, or reckless act or omission—An act or omission is intentional, knowing, or reckless if the person committing it:-~~

- ~~—(1) Deliberately causes or might cause physical injury or emotional harm to the child;~~
- ~~—(2) Knows or should know that physical injury or emotional harm to the child is a likely result of the act or omission; or~~
- ~~—(3) Consciously disregards an unjustifiable risk of physical injury or emotional harm to the child.~~

~~(c) Omission—A failure to act.~~

~~(d) Physical injury—Any bodily harm, including minor scrapes, cuts, and bruises. This includes any bodily harm resulting from the discipline of a child and any "substantial physical injury."~~

~~(e) Sexual conduct—Includes any of the following:~~

~~—(1) Any touching of the anus, breast, or any part of the genitals of a child with intent to arouse or gratify the sexual desire of any person;~~

~~—(2) Exposing the anus, breast, or any part of the genitals, knowing the child is present, with the intent to arouse or gratify the sexual desire of any person;~~

~~—(3) Engaging a child in any activity that is obscene as defined in the Penal Code, §43.21;~~

~~—(4) Requesting, soliciting, or compelling a child to engage in any activity that is obscene as defined in the Penal Code, §43.21;~~

~~—(5) In the presence of a child, engaging in or displaying any activity that is obscene as defined in the Penal Code, §43.21;~~

~~—(6) In the presence of a child, requesting, soliciting, or compelling another person to engage in any activity that is obscene as defined in the Penal Code, §43.21; or~~

~~—(7) The illegal or improper use of a child, which may or may not include sexual contact or touching, with intent to arouse or gratify the sexual desire of any person.~~

~~(f) Substantial emotional harm—An observable impairment in a child's psychological growth, development, or functioning that is significant enough to require treatment by a medical or mental health professional. Evidence that the emotional harm is substantial includes the nature of the act or omission, the age of the child, and/or the persistence of the symptoms. Substantial emotional harm is presumed when the act or omission is of a sexual nature, the child acts out sexually, or the child attempts suicide. A mental health professional does not have to determine that there is substantial emotional harm.~~

~~(g) Substantial physical injury—Bodily harm that warrants treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs. Evidence that physical injury is substantial includes the location and/or severity of the bodily harm and/or the age of the child.~~

~~§745.8557. What is abuse?~~

~~Abuse is any intentional, knowing, or reckless act or omission by someone working under the auspices of an operation that causes or may cause emotional harm or physical injury to, or the death of, a child that the operation serves. Intentional, knowing, or reckless acts and omissions include:~~

- ~~—(1) Any act such as striking, shoving, shaking, or hitting a child, whether intended as discipline or not;~~
- ~~—(2) Failure to make a reasonable effort to prevent abuse by another person;~~
- ~~—(3) Causing, expressly permitting, or encouraging a child to use alcohol or a controlled substance as defined by Health and Safety Code, Chapter 481 (other than a prescription drug that is prescribed to the child and used as prescribed);~~
- ~~—(4) Using alcohol or a controlled substance in a manner or to the extent that the use results in physical injury or emotional harm;~~
- ~~—(5) Sexual conduct that constitutes the offense of indecency with a child as defined under Penal Code, §21.11, sexual assault as defined under Penal Code, §22.011, or aggravated sexual assault as defined under Penal Code, §22.021;~~
- ~~—(6) Compelling or encouraging the child to engage in sexual conduct;~~
- ~~—(7) Failure to make reasonable effort to prevent sexual conduct to a child;~~
- ~~—(8) Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knows or should know that the resulting photograph, film, or depiction of the child is obscene as defined by Penal Code, §43.21, or pornographic; and~~
- ~~—(9) Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Penal Code, §43.25.~~

§745.8559. What is neglect?

Neglect is an act or omission that is a breach of a duty by a person working under the auspices of an operation that causes or may cause substantial emotional harm or substantial physical injury to a child. The breach of a duty includes:

- ~~—(1) Failure to take an action that a reasonable member of that profession, reasonable caregiver, or reasonable person should take in the same situation;~~
- ~~—(2) Taking an action that a reasonable member of that profession, reasonable caregiver, or reasonable person should not take in the same situation;~~
- ~~—(3) Placing a child in or failing to remove him from a situation that a reasonable member of that profession, reasonable caregiver, or reasonable person should realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities;~~
- ~~—(4) Leaving a child in a situation where a reasonable member of that profession, reasonable caregiver, or reasonable person would expect the child to be exposed to substantial physical injury or substantial emotional harm without arranging for necessary care for the child;~~
- ~~—(5) Failure to seek, to obtain, or to follow through with medical care for a child;~~

~~—(6) Failure to provide a child with food, clothing, and shelter necessary to sustain the life or health of the child;~~

~~—(7) Placing a child in or failing to remove the child from a situation in which a reasonable member of that profession, reasonable caregiver, or reasonable person should know exposes the child to the risk of sexual conduct;~~

~~—(8) A violation of any law, rule, or minimum standard that causes substantial emotional harm or substantial physical injury to a child;~~

~~—(9) Repeated (two or more) violations of any law, rule, or minimum standard, after notice and an opportunity to correct the violation, that may cause substantial emotional harm or substantial physical injury to a child;~~

~~—(10) Failure to comply with an individual treatment plan, plan of service, or individualized service plan that causes substantial emotional harm or substantial physical injury to a child; and~~

~~—(11) Repeated failures (two or more) to comply with an individual treatment plan, plan of service, or individualized service plan, after notice and an opportunity to correct the failure, that may cause substantial emotional harm or substantial physical injury to a child.~~

~~§745.8561. When will Licensing use the "reasonable and prudent parent standard" in conducting an investigation of a child placing agency or general residential operation?~~

~~We will use the "reasonable and prudent parent standard" when we investigate whether:~~

~~—(1) A child placing agency or general residential operation was deficient in a standard, rule, or other law because a foster parent or designated person:~~

~~——(A) Allowed a child to participate in a childhood activity; or~~

~~——(B) Denied a child access to a childhood activity or activities; or~~

~~—(2) A foster parent or designated person breached a duty in §745.8559 of this title (relating to What is neglect?) by allowing a child to participate in a childhood activity.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 19 DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
[CHAPTER 745 LICENSING
SUBCHAPTER K INSPECTIONS AND INVESTIGATIONS
DIVISION 6 TECHNICAL ASSISTANCE

~~§745.8581. What is technical assistance?~~

~~Technical assistance is information we provide to help you improve or maintain compliance with minimum standards, rules, and laws. Technical assistance itself is not a deficiency or enforcement action, and we do not use it in lieu of citing a deficiency.~~

~~§745.8583. When does Licensing provide technical assistance?~~

~~We may provide technical assistance in writing or in person:~~

- ~~—(1) at any time during an inspection or investigation;~~
- ~~—(2) as part of the ongoing regulatory process; or~~
- ~~—(3) at your request.~~

~~§745.8585 May I request an administrative review for technical assistance offered?~~

~~No. We provide technical assistance in order to help you with your compliance with minimum standards and other laws. Technical assistance does not include a decision or action you may challenge through an administrative review. If we offer you technical assistance in addition to citing you for a deficiency, you would have the right to request an administrative review related to the deficiency, but not the technical assistance.]~~