### 7430 Evaluation and Probation

#### 7431 Initiating an Evaluation or Probation

LPPH ~~December 2009~~ DRAFT 5387-CCL

Policy

If the criteria are met for placing an operation under evaluation or on probation (see [7420](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.jsp#LPPH_7420) Evaluation and Probation Decision Guide), the inspector discusses the recommendation with the supervisor and, when necessary, with the appropriate director or manager.

The inspector initiates evaluation or probation to encourage an operation to comply, when it appears that adverse action could be necessary if a deficiency continues uncorrected or is repeated.

The recommendation for evaluation or probation is made within 21 days from the date that the deficiency was cited or the triggering event that led to the determination for corrective action occurred.

The inspector must obtain supervisory approval before initiating contact with the operation about the evaluation or probation.

DFPS Rules, 40 TAC [§§745.8601](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8601); [745.8605](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8605); [745.8607](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8607); [745.8611](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8611); [745.8631;](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8631) [745.8633;](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8633) [745.8635](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8635)

Procedure

All Operations

Evaluation and probation involve imposing conditions that go beyond minimum standards and basic Licensing or registration requirements, such as requiring an operation’s staff to undergo additional training or implement new business practices.

The conditions must be:

• directly related to the specific deficiencies or violations cited; and

• designed to correct the deficiencies and ensure that the operation can remain in compliance with minimum standards.

See 7432.1 Determining the Appropriate Conditions for an Evaluation or Probation.

Registered Family Homes

The inspector recommends evaluation or probation for registered family homes only if:

• the caregiver’s resources appear adequate to establish and maintain compliance; and

• Licensing’s resources are adequate to monitor compliance with evaluation or probation.

#### 7432 Considering the Conditions and Length of Time for an Evaluation or Probation

LPPH ~~December 2009~~ DRAFT 5387-CCL (title is revised)

##### 7432.1 Determining the Appropriate Conditions for an Evaluation or Probation

LPPH ~~December 2009~~ DRAFT 5387-CCL (new item; currently a subheading of 7432)

Procedure

The conditions imposed on an operation as a result of an evaluation or probation must be:

• designed to reduce or eliminate the recurrence of deficiencies; and

• consistent with Licensing’s ability to monitor the situation.

If the conditions selected involve imposing restrictions on the license, the inspector may need to amend or reissue the permit. See [3810](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.jsp#LPPH_3810) Changes Affecting a License, Certificate, or Registration Permit.

For an operation that is placed on probation, Licensing staff also add a condition that requires the operation to post [Form 2999-E](http://intranet.dfps.txnet.state.tx.us/application/Forms/showFile.aspx?NAME=2999E.doc) Probation Notice in a prominent place near all public entrances of the operation.

DFPS Rules, 40 TAC [§745.8633](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8633)

##### 7432.2 Determining the Length of Time for Evaluation or Probation

LPPH ~~December 2009~~ DRAFT 5387-CCL (new item; currently a subheading of 7432)

When determining the length of time for imposing a corrective action, such as an evaluation or probation period, Licensing staff evaluate the following:

a. The severity of the deficiencies

b. Whether the deficiencies are repeated or demonstrate a pattern

c. How quickly the corrections can be made

d. The length of time needed to establish ongoing compliance

e. Whether the operation demonstrates responsibility for compliance with minimum standards, rules, and laws

f. The operation’s overall compliance history.

Texas Human Resources Code [§42.071(c)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.071)

DFPS Rules, 40 TAC [§§745.8601](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8601); [745.8605](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8605); [745.8607](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8607); [745.8611](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8611); [745.8631](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8631)

#### 7433 Creating the Corrective Action Letter for an Evaluation or Probation

LPPH DRAFT 5387-CCL (new item)

Licensing staff prepare a draft Corrective Action Letter (Form 2885), on the *Provider Corrective Action Plan* page in the CLASS system.

In the letter, Licensing staff specify:

• the deficiencies cited during the inspections and investigations that are the basis for the corrective action; and

• the conditions imposed to correct them.

The following statements are prefilled in the Corrective Action Letter:

a. *You must comply with all of the conditions in the corrective action plan and correct the minimum standards that were deficient.*

b. *You must post this letter in a prominent place near all the public entrances of the operations.*

c. *You must establish and maintain compliance with all Licensing statutes, rules, and minimum standards*.

#### 7434 Meeting With an Operation About an Evaluation or Probation

LPPH ~~December 2009~~ DRAFT 5387-CCL

Policy

Licensing staff schedule a meeting with the operation’s director or administrator and other operation staff, as appropriate, to:

a. notify the operation, in writing, about the corrective action;

b. explain the reasons for the corrective action;

c. discuss the conditions being imposed; and

d. answer any questions the operation’s staff may have.

During the review of conditions, Licensing staff may amend the conditions if needed.

If the meeting is conducted by phone, the inspector ensures that the permit holder receives copy of the plan before the phone conference.

The meeting must be held no later than the 15th day before the evaluation or probation period is scheduled to begin, to ensure that the operation has ample opportunity to request an administrative review.

Texas Human Resources Code [§42.071(c)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.071)

DFPS Rules, 40 TAC [§745.8609](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8609)

##### 7434.1 Required Participants When Meeting With an Operation About an Evaluation or Probation

LPPH ~~December 2009~~ DRAFT 5387-CCL

Procedure

The inspector and the inspector’s supervisor must attend when meeting with an operation to discuss an evaluation or probation period.

Upper management participates in the meeting when:

a. the circumstances pose a high level of risk to children;

b. multiple or complex conditions are imposed;

c. the operation resists the corrective action; or

d. additional circumstances warrant their involvement.

##### 7434.2 Topics Covered When Meeting With an Operation About an Evaluation or Probation

LPPH ~~December 2009~~ DRAFT 5387-CCL

Procedure

During a meeting held with an operation to discuss an evaluation or probation period, the inspector discusses:

a. the reason for the evaluation or probation period, including relevant background information;

b. the action the operation must take and any alternatives;

c. the operation’s history of compliance with statutes, administrative rules, minimum standards, restrictions or conditions on the license or registration, and any other conditions of evaluation or probation; and

d. the possible consequences if the correction is not made, the violation is repeated, or the conditions are not met.

##### 7434.3 Explaining the Corrective Action Plan When Meeting With an Operation

LPPH ~~December 2009~~ DRAFT 5387-CCL

Procedure

At the end of a meeting held with an operation to discuss an evaluation or probation period, the inspector gives the finalized Corrective Action Letter (Form 2885) to the operation’s representatives. The letter is located in the CLASS system.

If more time is needed to finalize the letter, the inspector sends the final letter to the operation by certified and regular mail within five days after the meeting.

A copy of the final letter is placed in the operation case record.

The inspector documents the following, in CLASS, by selecting the *Corrective/Adverse Action* category when entering data in the *Chronology*:

a. The meeting’s attendees

b. The conditions imposed on the operation;

c. Any technical assistance provided; and

d. The dates that the letter was delivered to and received by the operation.

The corrective action must begin no earlier than 15 days after the date that the letter was provided to the operation. The inspector enters the start date in CLASS, in the *Planned Begin Date* field on the *Provider Corrective Action Plan* page.

##### 7434.4 Starting a Corrective Action

LPPH DRAFT 5387-CCL (new item; current 7433.4 is deleted)

Procedure

A corrective action does not start until it is upheld, which occurs when:

• the operation waives the right to an administrative review; or

• the person who conducted the administrative review upholds the corrective action.

Once the corrective action is upheld, the inspector fills in the *Actual Begin Date* field on the *Provider Corrective Action* page in the CLASS system.

The *Actual Begin Date* cannot be earlier than the date by which the operation has to request an administrative review. See [7713.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.jsp#LPPH_7713_1) Determining Whether a Request for an Administrative Review Meets the Due Date.

#### 7435 Requesting an Administrative Review of an Evaluation or Probation

LPPH ~~December 2009~~ DRAFT 5387-CCL

Policy

If an operation is notified by Licensing that a corrective action may be imposed, and the operation disagrees with the action or any of the conditions imposed as a part of the evaluation or probation period (see [7710](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.jsp#LPPH_7710) Administrative Reviews), the operation may request an administrative review.

If the operation does not request an administrative review within 15 days after receiving the notification, the action is implemented as planned.

To expedite an unopposed corrective action, an operation may waive the administrative review, in writing, so that the action begins before the 15 days expires.

##### 7435.1 The Applicant’s Right to a Review of Restrictions or Conditions on a Permit

LPPH ~~December 2009~~ DRAFT 5387-CCL

If an inspector adds restrictions or conditions to a permit, the applicant may request an administrative review. The applicant also has the right to request an appeal.

See:

[3332](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3300.jsp#LPPH_3332) Setting Special Conditions on the License or Certificate

[3810](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.jsp#LPPH_3810) Changes Affecting a License, Certificate, or Registration Permit

[7730](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.jsp#LPPH_7730) Appeals

DFPS Rules, 40 TAC [§745.8613](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8613)

#### 7436 Inspecting an Operation During an Evaluation and Probation

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Production note: References to 7435 appear in 4134, 4151, and 7432. It is the only item in this job that has cross references.

Procedure

During an evaluation or probation, Licensing staff must inspect an operation at all of the following times, unless there is good cause not to inspect within these times because the operation has requested an administrative review or Licensing is conducting an investigation:

a. During the first 21 days after the corrective action period begins

b. At least once every 60 days during the *evaluation* period

c. At least once every 30 days during the *probation* period

d. At the end of the corrective action period

If an inspection is not held within the timeframes specified above, Licensing staff document the reason for the variation in the CLASS system, in the operation’s chronology.

Inspections conducted during the corrective action period are considered monitoring inspections and entered into in CLASS as such. During each inspection, the inspector evaluates an operation’s compliance with the conditions imposed by the corrective action plan and the section or sections of the minimum standards that relate to those conditions or that are due to be evaluated. See 4126 Monitoring Inspections.

Licensing staff:

a. document on CLASS Form 2936 that each condition of the corrective action was evaluated during the inspection;

b. cite as a deficiency any condition that was not met; and

c. provide technical assistance on meeting the condition.

DFPS Rules, 40 TAC [§745.8633](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8633)

Production note: This will change to 4152 when the 4000 reorg is published 8/1.

See [4151](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.jsp#LPPH_4151) Documenting a Review of the Conditions.

#### 7637 Emergency Suspension and Closure

LPPH ~~December 2009~~ DRAFT 5387-CCL

Policy

The inspector initiates the emergency suspension and closure of an operation when there is an immediate risk to the health or safety of children cared for or residing at the operation. The inspector, in consultation with a Licensing attorney, may choose to seek injunctive relief rather than using emergency suspension and closure. This may occur at any time in the regulatory process. See [7740](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.jsp#LPPH_7740) Injunctive Relief.

The decision to suspend and order immediate closure is made by the director.

The inspector discusses the decision to suspend and order immediate closure with the Licensing attorney before implementation.

The inspector documents the action in the CLASS system, in the chronology.

Texas Human Resources Code [§42.073](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.073)

DFPS Rules, 40 TAC [§745.8877](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8877)

Procedure

After consulting with legal staff, the inspector carries out the process for emergency suspension and closure, as described in Licensing policy.

See:

7637.1 Completing the Order for Emergency Suspension and Closure

7637.2 Writing the Letter for Emergency Suspension and Closure

7637.3 Delivering the Order and Letter for Emergency Suspension and Closure

##### 7637.1 Completing the Order for Emergency Suspension and Closure

LPPH ~~December 2009~~ DRAFT 5387-CCL

Procedure

Licensing staff use Form [2931](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2931.doc) Emergency Suspension and Closure Order (to notify an operation that:

• the operation’s license, registration, or listing is suspended; and

• the operation is being closed for a period of no more than 30 days.

The order must contain the following:

a. **The intent:** *Please be advised that pursuant to* [*§42.073*](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.073) *of the Texas Human Resources Code (copy attached), the child care operation named below is immediately closed and its permit, license, registration, or listing suspended for a period of 10 calendar days for child care or 30 calendar days.*

*Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*\_\_\_.

b. **The start date:** *This order is effective immediately upon receipt of it by the permit holder or the board chairperson.*

c. **The end date:** *This order expires on (date) at midnight*.

d. **The basis for the order:** *The Texas Department of Family and Protective Services has found that this child care operation poses an immediate threat to the health or safety or both of the children attending the operation. The reasons for the emergency order are attached as Exhibit A.*

e. **The nature of the adverse action:** The order must state that Licensing intends to take adverse action, in the form of revocation, against the operation. Licensing staff notify the permit holder in writing as soon as possible after the date of the emergency closure of the operation.

f. A statement at the bottom of the order to be signed by the person who accepts the order, showing receipt:

*I hereby acknowledge the receipt of this order on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 20\_*\_.

##### 7637.2 Writing the Letter for Emergency Suspension and Closure

LPPH ~~December 2009~~ DRAFT 5387-CCL

Procedure

Before sending Form [2931](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2931.doc) Emergency Suspension and Closure Order to an operation as notification that the operation is being closed for 30 days, the inspector prepares a cover letter to attach to the order.

The letter must be printed on DFPS letterhead and include the following details:

a. The reasons for the closure, including how the operation poses an immediate threat

b. A statement requiring the operation to notify parents, guardians, or managing conservators about the following:

• That it is necessary to pick up their children immediately. Parents whose children are in child day care centers must pick up their children within four hours of notification or by the end of the workday, whichever is longer. Parents whose children are in residential care operations must pick their children up as soon as possible.

• That the operation will send a follow-up letter to parents using certified mail within five days of the effective date of the closure. Copies of the return receipts must be given to Licensing within five days of receipt by the operation

c. The date the closure becomes effective

d. A statement explaining that a revocation of the permit is being prepared and that DFPS will send the operation a letter listing the reasons for the intent to revoke and offering an administrative review of the decision to revoke

e. A statement explaining that the inspector may be required to inspect the operation periodically during the 30-day closure to determine that there are no children in care that would require the operation to be subject to regulation.

##### 7637.3 Delivering the Order and Letter for Emergency Suspension and Closure

LPPH ~~December 2009~~ DRAFT 5387-CCL

Procedure

The inspector hand-delivers the emergency suspension and closure order and the letter of deficiencies to either:

• the operation’s director or administrator; or

• the operation’s owner or board chairperson.

The inspector must obtain an acknowledgment of receipt by requiring signatures:

• on a copy of the letter; and

• on the emergency suspension order.

For Child Day Care

The inspector ensures that all parents of the children enrolled are notified immediately about the closure.

The parents are notified:

• by the operation; or

• by the inspector who delivers the closure notice, while the inspector is at the operation.

When notifying the parents, the operation or the inspector must explain:

a. why the operation is being closed;

b. that the closure is for 30 days from the effective date; and

c. that parents must arrange to pick up their children within four hours, or by the end of the workday, whichever is longer.

If parents cannot be reached or cannot pick up their children within either four hours or the end of the workday*,* the inspector:

• notifies law enforcement; and

• contacts the regional office of Child Protective Services that serves the area in which the operation is located and asks CPS staff to take custody of the children and arrange for their removal.

For Residential Care

The parents, guardian, or managing conservator of the child must make other arrangements for the child’s care.

If the child was placed by a state agency, such as DFPS (CPS), the Department of Aging and Disability Services (DADS), or the Department of State Health Services (DSHS), the inspector notifies that agency.