### Note: all policies in the 5400 section have been replaced (5400-5430)

## 5400 Controlling Person

LPPH DRAFT 5482-CCL

Policy

Licensing staff conduct all of the following activities related to controlling persons for operations other than temporary shelter child care operations and small employer-based child care operations:

1. Obtain information on all controlling persons from applicants
2. Ensure that Licensing has the most current information on all controlling persons for operations with permits
3. Conduct searches in the CLASS and Adverse Action Record-Sharing (AARS) systems to search for controlling persons at operations that are applying for a permit
4. Conduct searches in the CLASS system for controlling persons at operations that have a permit
5. Enter information on controlling persons into the CLASS system
6. Determine eligibility for persons in the role of a controlling person
7. Notify the controlling person, applicant, or operation about the controlling person's eligibility for the role of controlling person
8. Monitor operations for compliance with statutes, administrative rules, and minimum standards related to controlling person
9. Conduct due process activities associated with controlling persons who are designated because an operation that the person was a controlling person for had a permit revoked

### 5410 Definitions of Terms Related to Controlling Persons

#### 5411 Definition of Controlling Person

LPPH ~~November 2009~~ DRAFT 5482-CCL (currently part of 5410)

Policy

A controlling person is a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies of an operation.

HRC [§42.002(18)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002)

All operations must identify persons serving in the role of a controlling person at the operation.

**Exception:** Identifying controlling persons is not required for temporary shelter child-care operations or small employer-based child care operations.

A controlling person of a child-care operation includes any of the following:

a. An owner of the operation

b. A member of the governing body of the operation, including, as applicable, an executive, an officer, a board member, and a partner

c. A sole proprietor

d. The sole proprietor’s spouse

e. The primary caregiver at a child-care home

f. The spouse of the primary caregiver at a child-care home

g. A person who manages, administrates, or directs the operation or its governing body, including a day care director or a licensed administrator

h. A person who, either alone or in connection with others, has the ability to influence or direct the management, expenditures, or policies of the operation. For example, a person may have influence over the operation because of a personal, familial, or other relationship with the governing body, manager, or other controlling person of the operation.

DFPS Rules, 40 TAC [§745.901(a)](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=901)

An employee, lender, secured creditor, or landlord of the operation is not a controlling person, unless the person meets the requirements listed above.

DFPS Rules, 40 TAC [§745.901(c)](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=901)

A person does not have to be present at the operation or hold an official title at the operation or governing body in order to be a controlling person.

DFPS Rules, 40 TAC [§745.901(b)](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=901)

##### 5411.1 Persons Who Are Ineligible to Be a Controlling Person

LPPH DRAFT 5482-CCL

Policy

A person may not serve as a controlling person at an operation regulated by Licensing if the person:

a. is ineligible to receive a permit (see 3241 How to Determine Whether the Applicant Is Eligible to Apply);

b. has been denied a permit for a substantive reason;

c. has had a permit revoked;

d. voluntarily closed an operation or relinquished a permit after Licensing notified the operation of the intent to revoke a permit;

e. voluntarily closed an operation or relinquished a permit after Licensing notified the operation of a decision to revoke a permit;

f. was a controlling person for an operation at the time conduct occurred that resulted in the permit being revoked;

g. was a controlling person for an operation that closed or relinquished a permit after Licensing notified the operation of the intent to revoke a permit;

h. who was a controlling person for an operation that closed or relinquished a permit after Licensing notified the operation of a decision to revoke a permit.

Human Resources Code [§§42.062](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.062), [42.072(c-1)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072), [42.072(g)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)

#### 5412 Definition of a Match for Controlling Persons

LPPH DRAFT 5482-CCL

Policy

In regard to controlling persons, a match exists when a search in the CLASS or HHSC Adverse Action Record-Sharing (AARS) systems reveals that a person is:

a. a designated controlling person;

b. a sustained controlling person;

c. ineligible to receive a permit (see 3241 How to Determine Whether the Applicant is Eligible to Apply); or

d. listed in the AARS system.

### 5420 Determining the Eligibility of a Controlling Person

LPPH DRAFT 5482-CCL

Policy

Processing Before Issuing a Permit

Before issuing a permit to an operation other than a temporary shelter child-care operation or small employer-based child care operation, Licensing staff determine whether each person entered on [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person is eligible to be a controlling person and document the decision, as follows:

a. Evaluates Form 2760 Controlling Person for completeness

b. Searches the CLASS and HHSC Adverse Action Record Sharing (AARS) systems for records on the person

c. Associates (links) a controlling person’s existing record with an operation's record in CLASS or adds a new record for the controlling person, under the operation's record in CLASS (see 5423.1 Associating a Controlling Person With an Existing Record in CLASS)

d. Determines the person's eligibility to be a controlling person by resolving any matches found as a result of searches conducted in the CLASS or AARS systems

e. Documents the person's eligibility in CLASS

f. Notifies the controlling person or operation about the person's eligibility

See:

5421 Form 2760 Controlling Person Form

5422 Searching of a Controlling Person in the AARS System and Documenting the Results

5423 Searching for and Adding a Controlling Person Record in CLASS

5424 Determining and Documenting the Eligibility of a Controlling Person

5425 Notifying an Operation or Controlling Person About a Person's Eligibility as a Controlling Person

Processing When an Operation Has a Permit

Within 10 days after an operation with a permit (other than a temporary shelter child-care operation or small employer-based child care operation) submits Form 2760 Controlling Person, the inspector determines whether each person not previously identified as a controlling person is eligible to be a controlling person and documents the decisions, as follows:

a. Evaluates Form 2760 Controlling Person for completeness

b. Searches the CLASS system for a record on the person

c. Associates (links) the controlling person’s existing record with the record for an operation in CLASS (see 5423.1 Associating a Controlling Person With an Existing Record in CLASS) or adds a new record for the controlling person under the record for the operation's record in CLASS (see 5423.2 Adding a New Record for a Controlling Person in CLASS);

d. Determines the person's eligibility to be a controlling person by resolving any matches found as a result of the search of the CLASS system

e. Documents the person's eligibility in CLASS

f. Notifies the controlling person or operation of the person's eligibility

See:

5421 Form 2760 Controlling Person Form

5423 Searching for and Adding a Controlling Person Record in CLASS

5424 Determining and Documenting the Eligibility of a Controlling Person

5425 Notifying an Operation or Controlling Person About a Person's Eligibility as a Controlling Person

#### 5421 Form 2760 Controlling Person Form

LPPH DRAFT 5482-CCL

Policy

[Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person is completed by an applicant or operation to provide Licensing with information on all controlling persons at the operation.

After receiving Form 2760, Licensing staff evaluate it to determine whether it is complete.

See:

5421.1 When an Applicant or Operation Completes Form 2760 Controlling Person

5421.2 Evaluating Form 2760 Controlling Person for Completeness

##### 5421.1 When an Applicant or Operation Completes Form 2760 Controlling Person

LPPH ~~November 2009~~ DRAFT 5482-CCL (currently part of 5410)

Policy

The applicant, designee, or head of the governing body of a child-care operation completes [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person to provide identifying information on each of the operation’s controlling persons:

• when submitting an application; or

• within two days after a person becomes a controlling person at the operation.

Before submitting Form 2760, the applicant, designee, or head of the governing body signs the form to indicate that the information submitted is correct.

**Exception:** Completing Form 2760 is not required for temporary shelter child-care operations or small employer-based child care operations.

DFPS Rules, 40 TAC [§745.903](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=903)

See:

[3311](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3300.asp#LPPH_3311) Application for a Licensed Child Day Care Operation

[3312](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3300.asp#LPPH_3312) Application for a License to Operate a Residential Child Care Operation

[3510](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.asp#LPPH_3510) Registration Permit Application

[3610](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.asp#LPPH_3610) Listing Application

##### 5421.2 Evaluating Form 2760 Controlling Person for Completeness

LPPH ~~November 2009~~ DRAFT 5482-CCL (currently 5411)

Policy

The inspector evaluates [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person to ensure that it is complete.

If the inspector receives Form 2760 as part of an application, the inspector cannot accept the application if Form 2760 is not complete.

Procedure

The inspector evaluates Form 2760 to ensure that the following identifying information is provided for each controlling person listed. Licensing staff use the identifying information to search for a controlling person in the CLASS system and the HHSC Adverse Action Record Sharing (AARS) system.

See:

5422 Searching for a Controlling Person in the AARS System and Documenting the Results

5423 Searching and Adding a Controlling Person Record in CLASS

a. Name (first, middle, last), including any maiden names, married names, or aliases

b. Date of birth

c. Driver’s license number or state-issued identification card number

d. Social Security number

e. Current address and phone number

f. Title, position, or relationship

g. Main office or branch office number, for persons associated with a child placing agency

h. Effective date as a controlling person

Licensing staff contact the operation or the controlling person to obtain the information, if:

• Form 2760 is not complete; or

• a controlling person’s Social Security number is not listed.

See:

[3243](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3000.asp#LPPH_3243) Checking the Application for Errors and Omissions

5421.21 Refusal to Provide a Social Security Number

###### 5421.21 Refusal to Provide a Social Security Number

LPPH 5482-CCL (new item)

If a controlling person's Social Security number is not listed on [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person, Licensing staff contact the operation or controlling person to ask for the person's Social Security number.

If the controlling person refuses to provide his or her Social Security number, Licensing staff:

• select the *Refused to Disclose SSN* indicator on the *Controlling Person Details* page in CLASS; and

• use other identifying information to conduct the search.

##### 5422 Searching for a Controlling Person in the AARS System and Documenting the Results

LPPH DRAFT 5482-CCL (new item)

Policy

Licensing staff search the HHSC Adverse Action Record Sharing (AARS) system only when [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person is submitted before a permit is issued.

A designated Licensing employee that has access to the AARS system conducts the search to determine whether an applicant or each of the persons listed on Form 2760 is eligible to be a controlling person. The designated employee documents the results of the search in the CLASS system. The AARS search is completed in addition to the search conducted to determine whether an applicant is qualified to apply for a permit (see [3240](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3000.asp#LPPH_3240) Reviewing and Accepting the Application for a Permit).

**Exception:** An AARS search is not conducted for applicants for permits for a temporary shelter child-care operation or small employer-based child care operation.

Procedure

After receiving Form 2760 Controlling Person, the inspector assigned to process the application coordinates with a designated user of the AARS system to conduct a search in the AARS system for the controlling person.

The designated user of the AARS system uses the information on the application and on Form 2760 to conduct the search.

After conducting the search, the designated user of the AARS system creates a *Chronology* in CLASS, with a chronology type of *Application,* to:

• document that a search of the AARS system was conducted for each controlling person; and

• document the results of the search for each controlling person.

###### 5422.1 If a Controlling Person Is Listed in the AARS System

LPPH DRAFT 5482-CCL (new item)

If the controlling person listed on an application or on [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) is found in the HHSC Adverse Action Record-Sharing (AARS) system:

• the designated user of the AARS system documents the results of the AARS search on Form 2760; and

• the inspector follows the procedures in 5424 Determining and Documenting the Eligibility of a Controlling Person to resolve the match.

##### 5423 Searching for and Adding a Controlling Person Record in CLASS

LPPH DRAFT 5482-CCL (new item)

Policy

For applicants and operations with a permit, the inspector conducts a search for the controlling person in the CLASS system, under the CLASS record for the operation that submitted the [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person. **(Exception**: A CLASS search is not completed for temporary shelter child-care operations or small employer-based child care operations.)

After conducting the search, the inspector:

• associates (links) a controlling person’s existing record with the operation's record in CLASS (see 5423.1 Associating a Controlling Person With an Existing Record in CLASS); or

• adds a new record for the controlling person under the operation's record in CLASS, if an existing record is not found (see 5423.2 Adding a New Record for a Controlling Person in CLASS).

If the operation is a child-placing agency (CPA), the operation may submit controlling persons either under the CLASS record for the CPA's main office or under the CLASS record for one or more of the CPA's branch offices. The inspector then associates or adds the controlling person to the CPA’s record in CLASS.

For all searches, the inspector associates or adds the person even if the person is found to be ineligible to be a controlling person.

The inspector leaves the *Status* field on the *Controlling Person Details* page as *Pending* until:

• the search for the controlling person in the CLASS system is complete;

• the search for the controlling person in the HHSC Adverse Action Record Sharing (AARS) system is complete (see 5422 Searching of a Controlling Person in the AARS System and Documenting the Results), if the operation is applying for a permit; and

• matches for the controlling person, when found as a result of the searches, are resolved (see 5424 Determining and Documenting the Eligibility of a Controlling Person).

##### 5423.1 Associating a Controlling Person With an Existing Record in CLASS

LPPH DRAFT 5482-CCL (new item)

Procedure

If a controlling person has an existing record in CLASS, the inspector associates (links) the person's record to the operation's record in CLASS by:

• selecting the controlling person’s record;

• selecting *Associate* on the *Controlling Person Search* page; and

• updating the information entered in the *Person Details, Alternate Names*, and *Selected Association* sections of the *Controlling Person Details* page.

If the controlling person is associated with a child-placing agency, the inspector also:

• enters the record for the controlling person under the operation number for the main office; and

• indicates whether the controlling person is associated with the main office or a branch office by:

• selecting *M* from the *Main/Branch* drop-down box in the *Selected Association* section of the *Controlling Persons Detail* page, if the person is associated with the CPA’s main office; or

• selecting the applicable branch number from the *Main/Branch* drop-down box in the *Selected Association* section of the *Controlling Persons Detail* page.

If a controlling person is associated with more than one of the CPA’s branch offices, the controlling person is entered under each applicable branch.

##### 5423.2 Adding a New Record for a Controlling Person in CLASS

LPPH DRAFT 5482-CCL (new item)

Procedure

If an existing record for a controlling person is not found after searching the CLASS system, the inspector adds a new record for the controlling person to the operation's record in CLASS by:

• selecting *Add New* on the *Controlling Person Search* page*;* and

• completing the *Person Details*, *Alternate Names*, and *Selected Association* sections of the *Controlling Person Details* page.

If the controlling person is associated with a child-placing agency, the inspector also:

• enters the record for the controlling person under the operation number for the main office; and

• indicates whether the controlling person is associated with the main office or a branch office by:

• selecting *M* from the *Main/Branch* drop-down box in the *Selected Association* section of the *Controlling Persons Detail* page, if the person is associated with the CPA’s main office; or

• selecting the applicable branch number from the *Main/Branch* drop-down box in the *Selected Association* section of the *Controlling Persons Detail* page.

If a controlling person is associated with more than one of a CPA’s branch offices, the controlling person is entered under each applicable branch.

#### 5424 Determining and Documenting the Eligibility of a Controlling Person

LPPH DRAFT 5482-CCL (new item)

Policy

After searching the CLASS and HHSC Adverse Action Record Sharing (AARS) systems, as appropriate, for a record on a controlling person and adding or associating a record for the controlling person in CLASS, the inspector:

a. determines whether a match exists;

b. resolves any matches found in the AARS system; and

c. updates the status of the controlling person in CLASS.

See:

5412 Definition of a Match for Controlling Persons

5424.1 Resolving Matches Found in the AARS System

5424.2 Eligibility to Receive a Permit or Be a Controlling Person After a Match Is Resolved

5424.3 Documenting the Eligibility of a Controlling Person by Updating the Status in CLASS

##### 5424.1 Resolving Matches Found in the AARS System

LPPH DRAFT 5482-CCL

Policy

If a search of the HHSC Adverse Action Record Sharing (AARS) system results in a match, Licensing staff resolve the match by:

• determining the reason for the match; and

• consulting with the Licensing attorney to determine whether the match makes the person ineligible to be a controlling person.

Procedure

After determining that a person has a match in the AARS system, the inspector determines whether the person has had a permit denied, revoked, or suspended by another HHSC agency because the applicant or person:

a. committed an act or omission that resulted in physical or mental harm to an individual;

b. is a threat to the health, safety, or well-being of an individual;

c. engaged in the physical, mental, or financial exploitation of an individual; or

d. committed an act or omission that renders the person unqualified or unfit to fulfill the obligations of the license.

The inspector and supervisor then consult with a Licensing attorney to determine whether the person’s listing in the AARS qualifies as a substantive reason to either deny the application or request that the operation remove the person from the role of controlling person.

See 5424.2 Eligibility to Receive a Permit or Be a Controlling Person After a Match Is Resolved.

##### 5424.2 Eligibility to Receive a Permit or Be a Controlling Person After a Match Is Resolved

LPPH ~~November 2009~~ DRAFT 5482-CCL (currently part of 5421)

Policy

The chart below outlines whether a person is eligible to receive a permit or serve as a controlling person at an operation, based on the type of match found on the controlling person during a search of the CLASS or HHSC Adverse Action Record Sharing (AARS) systems.

| If the person listed on [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Is … | does Licensing issue a permit? | Can the person serve as a controlling person? |
| --- | --- | --- |
| a designated controlling person … | No.  Licensing will not issue a permit until due process is final.  Licensing may deny a permit, if the person applies before due process is final.\* | Yes. |
| a sustained controlling person … | No.  Licensing denies the person a permit, if the application is received within 5 years after the designation is sustained.\* | No.  This person may not be a controlling person at an operation for 5 years after the designation is sustained. |
| ineligible to apply for a permit because of adverse action … | No.  Licensing cannot issue a permit because the person is ineligible to apply for a permit. | Maybe.  Licensing may allow the person to serve as a controlling person, if a Licensing attorney determines that the reason the person is ineligible to receive a permit does not constitute a substantive reason to prohibit the person from being a controlling person in a DFPS-regulated operation. |
| listed in the HHSC Adverse Action Record Sharing (AARS) system … | Maybe.  Licensing may issue a permit only if a Licensing attorney determines that the reason the person is listed in the AARS system does not constitute a substantive reason to deny the person a permit. | Maybe.  Licensing may allow the person to be a controlling person, if a Licensing attorney determines that the reason the person is listed in the AARS system does not constitute a substantive reason to prohibit the person from being a controlling person in a DFPS-regulated operation. |

\* If the applicant or permit holder is a business such as a corporation, the governing body must remove the person from the role of designated or sustained controlling person in order for the permit holder to comply with the law (that is, correct the deficiency) or in order for Licensing to issue a permit to an applicant.

DFPS Rules, 40 TAC §§[745.403](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=403); [745.907](http://info.sos.state.tx.us/pls/pub/readtac$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=907); [745.911](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=911)

Human Resources Code §[42.072(c-1)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)

##### 5424.3 Documenting the Eligibility of a Controlling Person by Updating the Status in CLASS

LPPH DRAFT 5482-CCL (new item)

Policy

The inspector updates the status of a controlling person in the *Status* field of the *Controlling Person Details* page in CLASS after:

a. not finding a match in the CLASS or AARS systems;

b. determining that the person is ineligible to be a controlling person;

c. determining that the person has ceased to be a controlling person at an operation; or

d. determining that the person was entered in error.

Procedure

The following chart explains the meaning of each option in the *Status* field.

| The *Status* selectedis … | *when…* |
| --- | --- |
| *Pending …* | a new record on a controlling person is entered for the operation.  *Pending* is the default value when adding or associating a controlling person record. |
| *Identified …* | a controlling person has no history that prohibits the person from being a controlling person (that is, the person is eligible to be a controlling person).  *Identified* is the status for all active controlling persons. |
| *Rejected …* | an operation submits the name of a controlling person for consideration, but the person has a history that prohibits the person from being a controlling person (that is, the person is ineligible to be a controlling person). See 5424.31 Entering the Reason for Rejecting a Controlling Person. |
| *Review …* | a controlling person is sustained because the person’s record is associated with an operation that had its permit revoked.  CLASS automatically updates the status to *Review* when this occurs. See 7000 Voluntary Actions and Remedial Actions |
| *Inactive …* | a controlling person ceases to be a controlling person at an operation.  A status is changed to *Inactive* only when an end date is entered. |
| *Withdrawn …* | a person is entered into CLASS in error (for example, entered under the wrong operation), or the operation withdraws the person from consideration. See 5424.32 Entering the Reason for Withdrawing a Controlling Person.  This does not include when an operation removes a person from a controlling person role after being notified by licensing that the person is ineligible to be a controlling person. |

###### 5424.31 Entering the Reason for Rejecting a Controlling Person

LPPH DRAFT 5482-CCL

Procedure

If the *Status* selected in the CLASS system for a controlling person is *Rejected,* the inspector selects a reason for the rejection from the *Rejection or Withdrawal Reason* drop-down box.

The following chart explains the meaning of each *Rejection* reason.

| The option selected under *Rejection Reason* is … | when the person is rejected from being a controlling person because … |
| --- | --- |
| *Sustained CP* | the person is listed as a sustained controlling person in CLASS. |
| *AARS History* | • the person is listed in the HHSC Adverse Action Record Sharing (AARS) system; and  • a licensing attorney has determined that the person is ineligible to be a controlling person. |
| *Previous Application Denied* | the person is ineligible to receive a permit. |

###### 5424.32 Entering the Reason for Withdrawing a Controlling Person

LPPH DRAFT 5482-CCL

Procedure

If the *Status* selected in the CLASS system for a controlling person is *Withdrawn,* the inspector selects a reason for the withdrawal from the *Rejection or Withdrawal Reason* dropdown box.

The following chart explains the meaning of the each *Withdrawal* reason.

| Theoption selected under *Withdrawal Reason* selected is … | when … |
| --- | --- |
| *Entered in Error* | the person was entered in error; for example, a person was entered for the wrong operation. |
| *Operation Request* | the operation withdrew the person’s name from consideration as a controlling person. |

#### 5425 Notifying an Operation or Controlling Person About a Person's Eligibility as a Controlling Person

LPPH DRAFT 5482-CCL

Policy

If the person submitted for consideration as a controlling person by an operation is determined to be eligible to be a controlling person, the inspector notifies the *controlling person* about the determination. See 5425.1 Notifying a Controlling Person About Eligibility.

If the person submitted by an operation is determined to be ineligible to serve as a controlling person, the inspector notifies the *operation* about the determination. See 5425.2 Notifying an Operation About an Ineligible Controlling Person.

DFPS Rules, 40 TAC §§[745.907](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=907); [745.911](http://info.sos.state.tx.us/pls/pub/readtac$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=911); [745.915](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=915)

##### 5425.1 Notifying a Controlling Person About Eligibility

LPPH DRAFT 5482-CCL (new item)

Procedure

If a person submitted as a controlling person by an operation is eligible to be a controlling person, the inspector sends [Form 2761](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2761.doc) Identifying a Controlling Person to the address listed for the controlling person in the CLASS system.

##### 5425.2 Notifying an Operation About an Ineligible Controlling Person

LPPH DRAFT 5482-CCL (new item)

Procedure

If an inspector determines that a person submitted as a controlling person by an operation is ineligible to be a controlling person, the inspector does as follows:

• Notifies the applicant or permit holder about the person’s ineligibility to be a controlling person by sending [Form 2765](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2765.doc) Match of an Ineligible Controlling Person to the operation. The form includes a compliance date and directs the operation to complete and return the Operation Action Form (located on the last page of the Form 2765) to Licensing by the compliance date.

• Discusses with the applicant or permit holder the accuracy of the details on the person's ineligibility, if the person who is ineligible to be a controlling person contacts the local Licensing office that sent the notice to say that he or she believes that the details are inaccurate.

Unless Licensing determines that the details on the person's ineligibility are inaccurate, the permit holder must remove the person from the operation.

###### 5425.21 Following Up With an Operation That Does Not Return the Operation Action Form

LPPH DRAFT 5482-CCL

Policy

If an operation fails to return the Operation Action Form to Licensing by the compliance date specified on the form, the inspector contacts the operation to ensure that the ineligible person has been removed from the role of controlling person. (The Operation Action Form is located on the last page of the [Form 2765](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2765.doc) Match of an Ineligible Controlling Person.)

If appropriate, the inspector takes one or more of the following actions:

a. Cites the operation for a violation of TAC §§[745.915(c)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=T&app=9&p_dir=P&p_rloc=147969&p_tloc=&p_ploc=1&pg=18&p_tac=&ti=40&pt=19&ch=745&rl=915); [748.103(12)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=748&rl=103), [749.103(16)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=749&rl=103), or [750.103(10)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=750&rl=103), as applicable, when the violation is for a sustained controlling person.

b. Cites the operation for a violation of TAC [§745.911](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=911) when the violation is because the person:

• has been denied a permit by Licensing because of compliance history in another state; or

• is associated with an operation that had its permit denied, revoked, suspended, or terminated by another state health and human services agency within the last 10 years.

c. Denies or revokes the permit.

DFPS Rules, 40 TAC §§[745.907](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=907); [745.911](http://info.sos.state.tx.us/pls/pub/readtac$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=911); [745.915](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=915)

Texas Government Code [§531.953](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.531.htm#531.953)

#### 5430 Additional Duties of Inspectors in Relation to Controlling Persons

LPPH DRAFT 5482-CCL

In addition to the duties explained in the items under 5420 Determining the Eligibility of a Controlling Person, inspectors also are responsible for the following:

a. Monitoring operations for compliance with the requirements on controlling person in statute, administrative rules, and minimum standards (see 4000 Inspections)

b. Ensuring that a person who is ineligible to be a controlling person at an operation that is regulated by Licensing does not serve in the role of a controlling person (see 7773.4 Reviewing the Status of a Sustained Controlling Person in CLASS)

c. Notifying controlling persons about corrective or adverse action taken against an operation (see 7110 Notifying an Operation When Licensing Takes Remedial Action)

d. Designating a controlling person (see 7771 Choosing the Persons to Designate as Controlling)

e. Sustaining a designated controlling person (see 7770 Administrative Review and Due Process Hearing for a Designated Controlling Person)

# Due to the complexity and volume of the revision to the 7000 section, some sections have comments that outline the purpose of the changes in the section.

# Staff should contact the CCL Policy Team by emailing the LPPH Mailbox if they have questions about this revision.

# 7000 Voluntary Actions and Remedial Actions (new title)

### 7110 Notifying an Operation When Licensing Takes Remedial Action

LPPH ~~December 2009~~ DRAFT 5482-CCL

Procedure

The inspector notifies the following persons, when Licensing takes remedial action against an operation:

1. The person in charge of the operation
2. The permit holder
3. The applicant or designee
4. The head of the governing body
5. Each controlling person

See [Appendix 3000-2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_3000_2.asp#LPPH_apx3000_2): Notifying the Operation.

### 7120 Documenting Voluntary Actions and Remedial Actions in CLASS and IMPACT

LPPH ~~December 2009~~ DRAFT 5482-CCL

*(New section; content formerly part of 7110)*

The chart below explains where inspectors document the actions taken and the processes followed when an operation takes a voluntary action or Licensing imposes a remedial action on an operation or person:

| The inspector documents … | in … |
| --- | --- |
| actions and processes related to:  • withdrawing an operation’s application;  • temporarily relocating an operation;  • developing a plan of action for an operation;  • developing a corrective action plan for an operation; or  • denying, revoking, or suspending an operation’s permit … | CLASS |
| the status of administrative reviews of abuse, neglect, or exploitation … | CLASS and IMPACT |
| the status of other administrative reviews, release hearings, and appeals … | CLASS |
| an operation’s:  • voluntary suspension; or  • voluntary closure … | CLASS |
| other actions not referenced above … | CLASS (*Chronology* section) |

### 7620 Criteria for Taking Adverse Action

LPPH ~~December 2009~~ DRAFT 5482-CCL

Policy

The inspector bases the decision to take adverse action on:

a. the seriousness of the deficiency or violation;

b. whether the operation can correct the deficiency or violation;

c. how responsible the permit holder seems;

d. how quickly the permit holder can correct the deficiency or violation; and

e. whether the inspector must impose conditions to keep the operation from repeating the deficiency or violation.

If emergency suspension and closure of an operation are required, the inspector consults with a Licensing attorney before proceeding.

See:

7610 Criteria for Taking Adverse Action

[3710](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.asp#LPPH_3710) Denial due to Failure to Comply With Minimum Standard Rules, Administrative Rules, or Law

[Appendix 7000-1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000.asp#LPPH_apx7000_1): Assessing the Need for Remedial Actions.

#### 7621 Circumstances That May Call for Adverse Action

LPPH ~~December 2009~~ DRAFT 5482-CCL

Adverse action may be taken or legal action requested under the following circumstances:

**Abuse or Neglect:** Abuse or neglect has occurred

**Deficiencies:**

• A single serious deficiency or a pattern of deficiencies in meeting the minimum standards, administrative rules, or the Human Resources Code, [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm)

• Several deficiencies that create an endangering situation or create an immediate threat or danger to the health and safety of children

**Liability insurance:** Failure to have or maintain liability insurance, when required.

**Serious Event:** A single serious event occurs at an operation and results in a violation that contributes to a child’s death, serious injury, harm, or immediate risk of serious injury or harm to a child.

**Evaluation, Probation, or Suspension:** Failure to successfully complete evaluation or probation, or failure to comply with licensing laws or rules at the end of the suspension period

**Emergency Closure:** Immediate enforcement (emergency closure and injunction)

**Background Check:** Issues are identified by a Central Registry background check or a criminal history check. (Adverse action is **not** taken and due process is **not** available when a listed home permit is automatically suspended or revoked because the listed family home failed to submit a 24-month background check by the due date.)

**Penal Code:** Conviction of an offense included in the Texas Penal Code (TPC), [Title 5](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.19.htm), [Title 6](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.25.htm), [Chapter 29](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.29.htm) of Title 7, [Chapter 43](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.43.htm) or [§42.072](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.42.htm#42.072) of Title 9, [§15.031](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.15.htm#15.031) of Title 4, or [§38.17](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.38.htm#38.17) of Title 8, or a similar offense in another state

**Controlled Substances:** Conviction of any law intended to control the possession or distribution of any substance included as a controlled substance in the [Texas Controlled Substances Act](http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.481.htm)

**Change of Location:** The permit holder of a registered or listed home fails to notify Licensing staff within 15 days about a change in location; or a child-placing agency fails to give Licensing staff timely notification about a move. See [3920](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.asp#LPPH_3920) Change of an Operation’s Location

**Problems With an Application:**

• A registered or licensed child day care applicant provides information on the application that shows a deficiency in meeting the minimum standards

• False information or false statements were given during the application process

**False Records:** Records or materials required by Licensing have been falsified or permitted to be falsified

**Conditions on the Permit:** An operation fails to comply with the restrictions or conditions placed on the permit

**Refusal of an Investigation:** Someone at the operation refuses, prevents, or delays an inspection or investigation

**Residential Care Applicant With a History in Another State:** For residential child care licensing only, an applicant has a permit for a residential child care operation revoked in another state or the applicant is barred from operating a residential child care operation in another state for reasons similar to those that would cause Licensing to take adverse action

**Public Notice and Hearing Requirements:** For residential child care licensing only, failure of an applicant or permit holder to comply with the requirements of a public notice or hearing, or the results of the hearing do not comply with the requirements

**Revoked or Relinquished Permit:** When the following occurs on or after September 1, 2005, for residential care, and on or after September 1, 2009, for day care:

• Licensing revokes a permit to operate a child care operation; or

• a permit holder voluntarily closes a child care operation or relinquishes the permit after receiving notice that Licensing:

• intends to take adverse action against the permit, or

• is taking adverse action against the permit

**Retaliation:** A residential child care operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides, in good faith, information relating to the misuse of restraint or seclusion at the operation

**Human Resources Code:**

• A reason set forth in Human Resources Code, [§42.078](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

• A failure to pay an administrative penalty under Human Resources Code, [§42.078](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

**Controlling Person:**

1. A designated controlling person applies for a permit before the due process for the designation is completed
2. A sustained controlling person applies for a permit or is listed on the application for a permit within five years of the designation being sustained
3. A person who has been denied a permit for a substantive reason applies for a permit within five years of the denial being sustained.
4. A person who is associated with an operation whose permit has been denied or revoked by another HHSC agency for a substantive reason applies for a permit.

**Sex Offender:** A sex offender resides at the operation

Texas Human Resources Code [§42.048](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.048)

DFPS Rules, 40 TAC [§745.8605](http://info.sos.state.tx.us/pls/pub/readtac%24ext.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) and §[745.8607](http://info.sos.state.tx.us/pls/pub/readtac%24ext.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)

### 7630 Taking Adverse Action

LPPH ~~December 2009~~ DRAFT 5482-CCL

Procedure

When imposing an adverse action, the inspector does as follows:

Determine the Appropriate Adverse Action

The inspector:

• uses the decision support guides provided as an aid in determining which action to recommend (see [7420](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7420) Evaluation and Probation Decision Guide and 7620 Criteria for Taking Adverse Action);

• recommends an adverse action and discusses it with the supervisor; and

• makes the recommendation to the district director or manager.

Notify the Permit Holder or Applicant About the Action

The inspector:

• notifies the permit holder or applicant about the intent to deny, revoke or suspend; and

• explains in the notification that the permit holder or applicant has the right to request an administrative review within 15 days after the permit holder receives the letter of intent to deny, revoke, or suspend.

See:

[7710](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7710) Administrative Reviews

7631 Notice of Intent to Deny, Revoke, or Suspend

7632 Process of Administrative Review for Adverse Action

Notify Controlling Persons About the Intent to Designate

If the action being taken is a revocation, the inspector:

• determines which controlling persons to designate; and

• notifies the controlling person about the intent to designate.

See 7770 Administrative Review and Doe Process Hearing for a Designated Controlling Person.

Notify the Permit Holder or Applicant About the Results of an Administrative Review

If the permit holder or applicant requests an administrative review, the inspector notifies him or her about the decision to deny, revoke, or suspend after the administrative review is completed. See [7632](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7632) Process of Administrative Review for Adverse Action.

If the permit holder or applicant appeals the Licensing decision, the inspector notifies him or her about the final decision to deny, revoke, or suspend after the opportunity to appeal has been exhausted. See 7633 Notice of Decision to Revoke, Deny, or Suspend an Application or Permit.

Documentation

The inspector documents all adverse action in the CLASS system.

The inspector generates all adverse action letters from CLASS, when letters are available.

The forms available in CLASS under the Corrective/Adverse Action tab in CLASS include:

Form 2880 Intent to Impose Adverse Action Letter

Form 2878 Decision to Impose Adverse Action Letter

Form 2895 Final Notice of Adverse Action Letter

#### 7631 Notice of Intent to Deny, Revoke, or Suspend

LPPH ~~December 2009~~ DRAFT 5482-CCL

Policy

The inspector consults with DFPS attorneys before notifying an operation or home about the intent to deny, revoke, or suspend.

No denial, revocation, or suspension is effective unless Licensing:

• notified the permit holder or applicant in person or by both regular and certified mail about the alleged deficiencies warranting action; and

• gave the permit holder or applicant an opportunity to retain the permit by showing compliance with Licensing statutes, administrative rules, and minimum standards.

Texas Government Code [§2001.054](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2001.htm#2001.054)

DFPS Rules, 40 TAC [§745.8609](http://info.sos.state.tx.us/fids/40_0745_8609-1.html)

Procedure

The inspector sends the notification letter (CLASS Form 2880 Intent to Impose Adverse Action) to the permit holder or applicant to:

• notify the permit holder or applicant about Licensing’s intent to deny, revoke, or suspend the permit; and

• explain the basis for that action.

##### 7631.1 Content of the Notification of Intent Letter

LPPH DRAFT 5482-CCL (new item)

*(New section; content formerly part of 7631)*

When preparing the notification letter (CLASS Form 2880 Intent to Impose Adverse Action), the inspector must include the following information:

a. A statement of intent to deny, revoke, or suspend the permit

b. The legal authority for the adverse action taken:

The authority is Human Resources Code [§42.072(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072). The Licensing inspector includes additional legal authority as applicable and with direction from DFPS legal staff for adverse action because of matches found during a background check, matches found during a search for a controlling person, or for the denial of a residential license.

For example, HRC [§42.072(f)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072) requires DFPS to revoke or deny an operation’s permit if the results of a background check show that a person has been convicted of an offense under [Title 5](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.19.htm), [Title 6](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.25.htm), or [Chapter 43](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.43.htm) of the Penal Code.

c. The specific details of the findings or basis for denial, revocation, or suspension, including:

1. specific citation of statute, administrative rules, and minimum standards,

2. dates of the deficiencies,

3. description of each deficiency, and

4. the name of the inspector who made the determination.

d. A statement that compliance records used as a basis for the action are enclosed with the notice.

##### 7631.2 Notifying an Operation About an Adverse Action When the Operation Has Been on Probation or Suspension

LPPH DRAFT 5482-CCL

*(New section; content formerly part of 7631)*

Probation

If the operation had been on probation, the inspector must include both of the following in the notification letter (CLASS Form 2880 Intent to Impose Adverse Action):

• The date that the operation was placed on probation

• A statement that the conditions were not met, if applicable

Suspension

If the operation had been on suspension, the notification must explain the corrections needed before the license or registration can be reinstated.

##### 7631.3 Notifying an Operation About an Adverse Action When There Is Risk to the Health or Safety of Children

LPPH DRAFT 5482-CCL

*(New section; content formerly part of 7631)*

If appropriate, the notification letter (CLASS Form 2880 Intent to Impose Adverse Action) must explain that the operation poses an immediate risk to the health or safety of children.

The inspector:

a. includes a statement that because of these risks, the operation must discontinue operating pending the outcome of a due process hearing, unless the permit holder obtains injunctive relief from a district court in the county in which the operation is located;

b. specifies how the operation poses an immediate danger to a child’s safety or health, or both, with information included as outlined under TAC [§745.751](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=751));

c. includes all pertinent information, such as:

*Your operation poses an immediate risk to the health or safety of children for several reasons: First, you have failed to meet the standards for supervision during eight inspections; second, two staff members were recently found to have neglected a child, and the child suffered substantial physical injuries because of the neglect; and third, the operation has failed to comply with minimum standard §\_\_\_.\_\_\_ eight times.*

If the operation poses a risk to a child’s health or safety, the district director or residential director changes the operation’s main page in CLASS by selecting the checkbox Do not display on the public/provider Web site to reflect that the operation must not be posted.

Texas Human Resources Code, [§42.072(e)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)

DFPS Rules, 40 TAC [§745.8875](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=8875)

##### 7631.4 The Operation’s Requirements for Notifying the Public About an Adverse Action

LPPH DRAFT 5482-CCL

*(New section; content formerly part of 7631)*

When preparing a notification letter (CLASS Form 2880 Intent to Impose Adverse Action), the inspector must include statements explaining the following.

Statement 1

Within five days of receiving the notification letter, the operation must notify the public about the adverse action by sending a copy of the adverse action letter by certified mail to each parent or managing conservator (one copy for each child currently enrolled in the operation).

Statement 2

The operation must post the adverse action in a prominent place near each public entrance, as required by DFPS Rules, 40 TAC [§745.8873](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8873), [§745.8655](http://info.sos.state.tx.us/pls/pub/readtac$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=8655).

Statement 3

The operation must notify persons seeking to enroll a child that Licensing is seeking to deny, suspend, or revoke the permit.

Statement 4

The operation must give the inspector a copy of each return receipt (the green card) within five days after receiving return receipts generated by the letters operation staff sent by certified mail.

Texas Human Resources Code, [§42.077(d-1)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.077)

DFPS Rules, 40 TAC §§[745.8655](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8655); [745.8879](http://info.sos.state.tx.us/pls/pub/readtac$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=8879)

The inspector follows up to ensure that the operation has:

• notified the parents; and

• sent the receipts to Licensing.

##### 7631.5 Notifying an Operation About the Right to Request an Administrative Review

LPPH DRAFT 5482-CCL

*(New section; content formerly part of 7631)*

When preparing a notification letter (CLASS Form 2880 Intent to Impose Adverse Action), the inspector must include a statement that:

• explains that the operation has a right to request an administrative review; and

• explains the procedures for requesting a review, including:

• whom to contact and where that person can be reached; and

• that an administrative review must be requested within 15 days after receipt of the letter.

DFPS Rules, 40 TAC §§[745.8613](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8613); [745.8809-745.8817](http://info.sos.state.tx.us/pls/pub/readtac$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=8809)

##### 7631.6 Notifying an Operation About the Restrictions on Reapplying for a Permit

LPPH DRAFT 5482-CCL

*(New section; content formerly part of 7631. Previously, the highlighted paragraph only applied to residential licensing; the policy now applies to day care licensing as well.)*

When preparing a notification letter (CLASS Form 2880 Intent to Impose Adverse Action), the inspector must include a statement that the permit holder or applicant whose permit has been denied or revoked may not apply for another permit before the fifth anniversary after the adverse action takes effect.

Texas Human Resources Code, [§42.072(c)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)

If the inspector denies a permit and the denial of the permit is upheld, the inspector applies a five-year restriction on reapplying.

If a sustained controlling person reapplies for a permit within five years from the date that the applicant was sustained, the inspector does not apply an additional five-year restriction. Applying within five years is not considered a substantial enough violation to warrant an additional five-year restriction.

##### 7631.7 Notifying an Operation About Restrictions on Controlling Persons

LPPH DRAFT 5482-CCL

*(New section; content formerly part of 7631. Previously, the highlighted paragraph only applied to residential licensing; the policy now applies to day care licensing as well.)*

When preparing a notification letter (CLASS Form 2880 Intent to Impose Adverse Action), the inspector must include a statement that when Licensing revokes a child care permit, controlling persons associated with the operation:

• are designated as controlling; and

• receive a letter offering an administrative review of that designation.

The inspector includes that a person’s designation as a controlling person is sustained when the revocation and the due process for a designated controlling person are final.

For five years after the designation is sustained, a sustained controlling person cannot:

• obtain a permit to operate a child care operation; or

• serve as a controlling person.

Texas Human Resources Code, [§42.072(g)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)

DFPS Rules, 40 TAC [§745.8873](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=8873)

##### 7631.8 Authorizing and Delivering a Notification Letter (CLASS Form 2880)

LPPH DRAFT 5482-CCL

*(New section; content formerly part of 7631)*

The notification letter (CLASS Form 2880 Intent to Impose Adverse Action), must be signed by the inspector’s director, manager, or designee.

The inspector:

• delivers the letter to the permit holder or applicant personally or by courier and obtains a signed receipt; or

• sends the letter by both regular and certified mail, with a return receipt requested.

The inspector sends a copy of the letter to the:

1. director;
2. manager (if applicable);
3. Licensing attorney;
4. supervisor; and
5. residential contract manager (if applicable).

Day care inspectors also notify:

• the local Child Care Management Services (CCMS); and

• the Child and Adult Care Food Program (CACFP), if applicable.

DFPS Rules, 40 TAC [§745.8657](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=8657)

##### 7631.9 When Immediate Intervention Is Warranted at an Operation

LPPH DRAFT 5482-CCL

*(New section; content formerly part of 7631)*

If circumstances at the operation are determined to be so extreme that immediate intervention is warranted, the inspector may make a referral for legal action (injunctive relief) simultaneously with the mailing of the notification letter (CLASS Form 2880 Intent to Impose Adverse Action).

See [7740](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7740) Injunctive Relief.

#### 7632 The Process of Administrative Review for Adverse Action

LPPH ~~December 2009~~ DRAFT 5482-CCL

Policy

The inspector must inform a permit holder or applicant that the permit holder or applicant:

• has a right to request an administrative review, if he or she disagrees with an adverse action; and

• must request the review no later than 15 days after being notified about the right.

See:

7630 Taking Adverse Action

[7710](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7710) Administrative Reviews

If the permit holder or applicant does not request an administrative review within 15 days after the notification, the action is implemented as planned.

The permit holder or applicant may file a written waiver of administrative review so that the action may begin before the 15 days expires.

The administrative review for the revocation of a permit or certificate may be combined with the administrative reviews for designated controlling persons. Licensing may combine the reviews or may hold each review separately.

DFPS Rules, 40 TAC §[§745.8613](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8613); [745.909(b)](http://info.sos.state.tx.us/pls/pub/readtac$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=909)

##### 7632.1 Adverse Action Is Overturned at an Administrative Review (new title)

LPPH ~~December 2009~~ DRAFT 5482-CCL

Procedure

If the permit holder or applicant shows compliance and the person conducting the administrative review overturns the adverse action, the person conducting the administrative review mails a letter on DFPS Letterhead (CLASS Form 2834a), advising the permit holder or applicant about the decision.

The inspector sends the letter within 15 days following the administrative review.

For the procedures on providing due process for a person designated as controlling as a result of a revocation, see 7773.1 Adverse Action Overturned or Stopped.

##### 7632.2 Adverse Action Is Upheld at an Administrative Review or No Administrative Review Is Requested (new title)

LPPH ~~December 2009~~ DRAFT 5482-CCL

Procedure

If an administrative review is not requested, or if compliance was not shown during the administrative review, the inspector notifies the permit holder or applicant by sending a decision letter (CLASS Form 2878 Decision to Impose Adverse Action).

The inspector sends the letter within 15 days following the administrative review or within 15 days of the administrative review being waived.

The inspector initiates adverse action.

See:

7633 Notice of Decision to Revoke, Deny, or Suspend an Application or Permit

[7710](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7710) Administrative Reviews

7773 Process of Administrative Review for the Designated Controlling Person

#### 7633 Notice of Decision to Revoke, Deny, or Suspend an Application or Permit

LPPH ~~December 2009~~ DRAFT 5482-CCL

Policy

If, after the opportunity for administrative review, Licensing decides to revoke, suspend, or deny an application or permit, the district director, the director of residential child care licensing, or a designee sends a certified letter to the permit holder or applicant to notify the permit holder or applicant about the decision.

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)

Procedure

The inspector notifies the permit holder or applicant about the decision to revoke, suspend, or deny, by sending a decision letter (CLASS Form 2878 Decision to Impose Adverse Action) by both regular and certified mail.

The decision letter must include the following:

1. A statement that the permit holder or applicant either did not request an administrative review, or did request an administrative review but the decision to take adverse action was upheld
2. The date that the administrative review was held; if applicable
3. The name of the Licensing staff who conducted the review, if applicable

The legal authority for the adverse action is Human Resources Code [§42.072(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm).

The inspector includes additional legal authority as applicable and with direction from DFPS legal staff for adverse action due to matches found during a background check, matches found during a search for a controlling person, or for the denial of a residential license.

For example, HRC §42.072(f) requires Licensing to revoke or deny an operation’s permit if the results of a background check show that a person has been convicted of an offense under [Title 5](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.19.htm), [Title 6](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.25.htm), or [Chapter 43](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.43.htm) of the Penal Code.

The inspector must also:

• include a statement that the notification letter (CLASS Form 2880 Intent to Impose Adverse Action), was sent, demonstrating the basis for the action; and

• attach a copy of notification letter (CLASS Form 2880).

##### 7633.3 Notifying an Applicant Who Is Denied or Revoked About the Restrictions on Reapplying (new title)

LPPH ~~August 2010~~ DRAFT 5482-CCL

*(Previously, the highlighted paragraph only applied to residential licensing; the policy now applies to day care licensing as well.)*

Policy

When the inspector notifies a permit holder or applicant that Licensing is taking action to revoke or deny the permit holder’s or applicant’s child care permit, staff must also provide written notification about the applicable restrictions on reapplying for a permit.

Procedure

The inspector includes a statement in the decision letter (CLASS Form 2878 Decision to Impose Adverse Action Letter), that the permit holder or applicant whose permit has been denied or revoked may not apply for another permit before the fifth anniversary after the adverse action takes effect.

If an inspector denies an applicant a permit because the applicant applies within five years from the date that the applicant was sustained as a controlling person, the inspector does not apply an additional five-year restriction because applying within five years is not considered a substantial violation to warrant it.

##### 7633.4 Notifying an Operation About a Controlling Person’s Right to Request a Hearing (new title)

LPPH DRAFT 5482-CCL (new item)

*(Previously, the highlighted portion only applied to residential licensing; the policy now applies to day care licensing as well.)*

When revoking a permit, the inspector includes in the notification letter (CLASS Form 2880 Intent to Impose Adverse Action) a statement that each designated controlling person will be notified about the ability to request a due process hearing.

A person’s designation as a controlling person is sustained when the revocation and the due process for a designated controlling person are final.

If the revocation of a person’s permit or designation as a controlling person is sustained by Licensing, the person is restricted for five years from:

• obtaining a permit to operate a child care operation; or

• becoming a controlling person.

Texas Human Resources Code, §§[42.072(c)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072); [42.062](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.062); [42.072(g)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)

Production note: The published version of 7634 is not changing.

#### 7635 Sending an Operation Final Notice of Suspension, Revocation, or Denial

LPPH ~~December 2009~~ DRAFT 5482-CCL

Policy

The district director, director for residential child care licensing, or manager notifies the applicant or permit holder that the decision to revoke, suspend, or deny the permit is final when:

• the opportunity to request a due process hearing has passed; or

• the decision is upheld at the due process.

The inspector must:

• publish a notice about the denial, revocation, or suspension in the local paper of general circulation in the county in which the operation is located; or

• post notice on the DFPS website.

Texas Human Resources Code [§42.077(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.077)

DFPS Rules, 40 TAC [§745.8659](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=8659)

Procedure

The district director, manager, or designee:

a. sends a Final Adverse Action letter (CLASS Form 2895) to the permit holder or applicant by both regular and certified mail, with a return receipt requested;

b. notifies DFPS staff; and

c. publishes a public notice.

See also 7632 The Process of Administrative Review for Adverse Action.

##### 7635.1 Statements Required in the Notice of Final Adverse Action (CLASS Form 2895)

LPPH ~~December 2009~~ DRAFT 5482-CCL

*(Previously, the highlighted portion only applied to residential licensing; the policy now applies to day care licensing as well.)*

Procedure

When an inspector sends a final notice of adverse action to a permit holder or applicant, as required in 7635 Final Notice of Suspension, Revocation, or Denial, the inspector includes the following statements in the notice.

Statement 1: Decision Is Final

The final notice must include a statement that the decision to revoke, suspend, or deny is final according to the requirements in Human Resources Code, Section [42.072](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072).

In the case of revocation or suspension, the operation must return the permit, if the operation is still operating when it is notified.

Statement 2: Operation Must Notify Parents or Managing Conservator

If the final notice is being sent to a permit holder who is operating, the final notice must include a statement requiring the permit holder to:

• mail a notice about the adverse action to the parents or managing conservator of each child enrolled; and

• send the notice by both certified and regular mail within five days of the date that the permit holder received notice about the denial, suspension, or revocation.

Texas Human Resources Code [§42.077(d)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.077)

DFPS Rules, 40 TAC [§745.8661](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=8661)

Statement 3: DFPS Will Notify the Public

The final notice from DFPS to the permit holder or applicant must also explain that notice about the adverse action will be published by DFPS in the local newspaper or on the DFSP website. See 7635.2 Additional Actions to Be Taken by Licensing Staff

In the case of a denial, Licensing publishes the notice only if the permit holder was previously operating. Notification will also be sent to any state and federal programs and agencies, as appropriate.

Texas Human Resources Code [§42.077(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.077)

DFPS Rules, 40 TAC [§745.8659](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=8659)

Statement 4: Applicant Is Restricted From Reapplying

The final notice must contain a statement that the permit holder or applicant whose permit has been denied or revoked may not apply for another permit before the fifth anniversary after the adverse action takes effect.

Texas Human Resources Code [§42.072(c)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)

If an applicant applies for a permit within five years from the date that the applicant was sustained as a controlling person, the inspector does not apply an additional five-year restriction because applying within five years is not considered a substantial violation.

Statement 5: Operating Without a Permit Will Result in Legal Action

The final notice must note that beginning or continuing operation without a permit is a violation of the law and will result in legal action.

For a state-operated operation, legal action may not be taken. The inspector notifies the relevant state agency to explain that DFPS will notify the state administrative authority.

##### 7635.2 Additional Actions Taken by Licensing Staff When Adverse Action Is Final

LPPH ~~December 2009~~ DRAFT 5482-CCL

Procedure

Notifying DFPS Staff and Other Entities

The inspector sends copies of the Final Adverse Action notice (CLASS Form 2895) to the following Licensing staff responsible for the operation:

1. The Licensing attorney
2. The district director or residential director
3. The supervisor

d. The residential contract manager (when applicable)

e. The staff of the following (when applicable):

• The local child care food program

• The local child care management system (CCMS)

Publishing a Public Notice

The inspector publishes a notice about the revocation or denial:

• in the local newspaper; or

• on the DFPS website.

See Statement 3 in 7635.1 Statements Required to Be Included in the Letter.

The public notice reads as follows:

*”The Texas Department of Family and Protective Services [denied/revoked/suspended] the [permit] issued to [name of operation] located at [complete address and zip code] effective [date]. For further information, contact [local Licensing office phone number].”*

If Hispanic households make up 50 percent or more of the population in the county in which the registered or listed family home is located (according to the most recent census statistics), the notice for revocation or suspension must also be published in Spanish.

Texas Human Resources Code [§42.077](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.077)

DFPS Rules, 40 TAC [§§745.8609](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8609); [745.8657](http://info.sos.state.tx.us/pls/pub/readtac$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=8657)

**Entering Data in HHSC’s Adverse Action System**

Once a denial or revocation is final, the designated user of the HHSC Adverse Action Record Sharing (AARS) system enters information about the operation and the operation’s controlling persons if the denial or revocation is for one of the following reasons:

a. The applicant committed an act or omission that resulted in the physical or mental harm to an individual

b. The applicant is a threat to the health, safety, or well-being of an individual

c. The applicant engaged in the physical, mental, or financial exploitation of an individual

d. The applicant has committed an act or omission that renders the person unqualified or unfit to fulfill the obligations of the permit

*DFPS Rules, 40 TAC §*[*745.907*](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=907)

Texas Government Code [§531.953](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.531.htm#531.953)

See 7774 Documenting Sustained Adverse Actions and Controlling Persons Into the HHSC Adverse Action Record Sharing System.

## 7700 Legal Actions When an Operation Disagrees With the Actions of an Inspector (new title)

LPPH ~~December 2009~~ DRAFT 5482-CCL

Policy

If an operation disagrees with certain actions taken by the inspector, the operation may request an administrative review.

If an adverse action is taken or an administrative penalty is imposed, an operation may request a hearing before an administrative law judge (ALJ) from the State Office of Administrative Hearings (SOAH).

The inspector may request injunctive relief, including restraining orders and civil penalties when necessary to protect children.

An operation may seek injunctive relief from the district court in Travis County or from the county in which the operation is located. See [7733](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7733) Suit Filed.

Texas Human Resources Code [§42.072(e)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)

DFPS Rules, 40 TAC [§§745.8613](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8613); [745.8835](http://info.sos.state.tx.us/pls/pub/readtac$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=8835); [745.8837](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8837); [745.8681](http://info.sos.state.tx.us/pls/pub/readtac$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=8681); [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)

Procedures

Administrative Review

An administrative review is a review conducted by a supervisor or other designated Licensing staff when an operation disagrees with certain decisions or action made by the inspector. See [7710](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7710) Administrative Reviews.

DFPS Rules, 40 TAC [§§745.8801](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8801); [745.8803](http://info.sos.state.tx.us/pls/pub/readtac$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=8803)

Release Hearing

An individual may request a release hearing held by the SOAH, when the individual has been notified that he or she will be listed in the DFPS Central Registry as a perpetrator of abuse or neglect of a child. See [7720](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.jsp?zoom_highlight=%22controlling+person%22#LPPH_7720#LPPH_7720) Release Hearings.

DFPS Rules, 40 TAC Chapter 745, Subchapter M, [§745.8805a(1)-(3)](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=8805)

Due Process Hearing

*(All references to “appeal hearing” have been changed to “due process hearing.”)*

A due process hearing is a hearing held by the SOAH at an operation’s request if the operation has had:

• an adverse action of denial, revocation, suspension; or

• an adverse amendment to a license certificate, registration, listing, or compliance certificate.

A due process hearing may also be held by the SOAH at the request of an operation’s governing body, director, or designee, if a recommendation of an administrative penalty is made against the operation. See 7730 Due Process Hearings, and [7500](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7500) Administrative Penalties.

Texas Human Resources Code [§42.078](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

DFPS Rules, 40 TAC Chapter 745, Subchapter M, [§745.8803](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=8803)

Combination Hearing

A combination hearing is a single hearing held by the SOAH combining either of the following:

• A due process hearing for an adverse action and a release hearing.

This may be done when an adverse action is being taken against an operation and the operation is the designated perpetrator of abuse or neglect, and the same set of facts apply to both actions; or

• A due process hearing for a revocation and a due process hearing for a controlling person.

This may be done when an operation’s permit is being revoked and those designated as controlling request due process hearings, if the judge decides to combine the hearings. If so, the SOAH judge decides how to handle the designation of the controlling persons at the time of the revocation hearing.

Injunctive Release

An injunction is a legal action by district court. Licensing may seek an injunction enjoining a permit holder from operating. A permit holder may seek injunctive relief from Licensing to continue operating.

See:

[7740](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7740) Injunctive Relief

[7733](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7733) Suit Filed

[7760](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7733) Settlement of Legal Case

Hearing Requested by Controlling Person

A person designated by Licensing as controlling may request a due process hearing conducted by the SOAH.

A controlling person against whom Licensing recommends imposing an administrative penalty may also request a due process hearing. Licensing assesses penalties against controlling persons at residential operations only.

DFPS Rules, 40 TAC Chapter 745, [Subchapter M](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=19&ch=745&sch=M)

Texas Human Resources Code [§§42.074](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.074); [42.072(e)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072); [42.078](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.078)

Texas Government Code, [Chapter 2001](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2001.htm)

DFPS Rules, 40 TAC §[§745.8851](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8851); [745.909](http://info.sos.state.tx.us/pls/pub/readtac$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=909)

#### 7712 Roles for Conducting an Administrative Review

LPPH ~~April 2011~~ DRAFT 5482-CCL

Policy

Routine Violations

A supervisor plans and conducts administrative reviews of routine violations.

Routine violations:

• are identified during inspections or investigations; and

• do not involve abuse or neglect.

All Other Decisions and Actions

For all other Licensing decisions and actions (including reviews related to findings of abuse or neglect), the administrative review is conducted by the relevant:

a. division administrator;

b. district director;

c. manager;

d. risk analyst; or

e. designee.

In the case of an administrative review for a finding of abuse or neglect, the reviewer:

• must not have been involved in the investigation; and

• must not have directly supervised it.

DFPS Rules 40 TAC [§745.8813](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=8813)

### 7730 Due Process Hearings (new title)

LPPH ~~December 2009~~ DRAFT 5482-CCL

Policy

The applicant or permit holder may request a due process hearing on a Licensing decision intended to:

a. deny an application or permit or revoke or suspend a permit;

b. impose an administrative penalty (permit holder only); or

c. place a new or additional restriction or condition on the permit after initial issuance (permit holder only).

Controlling Person

A person designated as controlling may request a due process hearing when due process rights are offered regarding the designation.

A controlling person may request a due process hearing when an administrative penalty is being imposed against the individual.

Licensed Administrator

A licensed administrator may request a due process hearing if DFPS decides to deny, revoke, or suspend the administrator’s license.

To request a due process hearing, the administrator:

1. sends a letter to the following, within 30 days of receiving notice from DFPS about the option to appeal:

Docket Clerk

Legal Services, Mail Code Y-956

Texas Department of Family and Protective Services

P.O. Box 149030

Austin TX 78714-9030;

b. includes in the letter the reasons for wanting to appeal the action or decision.

c. sends a copy of the letter to the inspector or supervisor.

DFPS Rules, 40 TAC §§[745.909](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=909); [745.8613](http://info.sos.state.tx.us/pls/pub/readtac$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); [745.8837](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8837); [745.8839](http://info.sos.state.tx.us/pls/pub/readtac$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=8839); [745.8841](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=8841)

Waiver of Due Process Rights

Due process rights for a hearing are waived by the operation or individual, if the rights were not requested according to DFPS Rules, 40 TAC [§745.8839](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8839) and [§745.8841](http://info.sos.state.tx.us/pls/pub/readtac$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=8841).

If due process rights are waived by not requesting a hearing according to the rules, the Licensing decision or action, or both, is effective the day after the date that the option to request a hearing expires, unless the due process hearing was offered due to the designation of a controlling person.

If the due process hearing was offered due to the designation of a controlling person, and the controlling person does not request a hearing, the Licensing decision is effective on:

• the day after the date that the revocation is final and;

• after the controlling person has waived his or her rights to a due process hearing.

DFPS Rules, 40 TAC [§745.907(b)](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=907)

See also 7770 Administrative Review and Due Process Hearing Designated Controlling Person.

Expediting the Appeals Process

If an applicant or permit holder asks to expedite a Licensing decision or adverse action, or both, the inspector directs the applicant or permit holder to send Licensing a written waiver of the right to a due process hearing before the 30-day time frame has expired.

The Licensing decision or action is effective on the date that Licensing receives the written waiver.

DFPS Rules, 40 TAC [§745.8855](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=8855)

State Office of Administrative Hearings

If granted, the request for an appeal is forwarded by the docket clerk for the DFPS Office of General Counsel to the State Office of Administrative Hearings (SOAH).

Operating During the Appeal Process

A permit holder may continue to operate during the appeal process, if the operation does not pose an immediate risk to the health or safety of children.

DFPS Rules, 40 TAC [§§745.8835](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8835); [745.8839](http://info.sos.state.tx.us/pls/pub/readtac$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=8839); [745.8841](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8841); [745.8873](http://info.sos.state.tx.us/pls/pub/readtac$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=8873); [745.8875](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=8875)

The Appeals Process

When a permit holder or applicant requests an appeal of a Licensing decision or action, an administrative law judge (ALJ) is assigned to the case.

If the inspector believes that a permit holder or applicant has not filed an appeal in a timely manner:

• the inspector notifies the Licensing attorney for the DFPS state office; and

• the Licensing attorney files a motion to dismiss the case.

Once the hearing has been docketed, DFPS legal staff track time lines and arrange for discovery, amended notices, and so on, in accordance with the relevant law.

The inspector also may be asked to assist in presenting testimony or providing background information or evidence to be used at the hearing. See [Appendix 7000-2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000_2.asp#LPPH_apx7000_2): Guidelines for Preparing Records for SOAH Hearings and Tracking Hearings.

DFPS Rules, 40 TAC [§745.8843](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=8843)

Documentation

On the applicable due process page in CLASS, the inspector documents:

• the status of the due process hearing; and

• information on the hearing.

#### 7732 When an Administrative Law Judge Issues a Final Decision on an Appeal (new title)

LPPH ~~December 2009~~ DRAFT 5482-CCL

Procedure

When a final decision is issued on an appeal and the administrative law judge (ALJ) upholds the adverse action, the district director, manager, or designee sends the appellant the Final Adverse Action letter (CLASS Form 2895) as notification, if:

• the appellant requested a rehearing and the request was denied; and

• the appellant does not then file suit in a district court within 30 days after the decision.

The director, manager, or designee:

• explains in the letter that the decision to deny, suspend, or revoke the permit is final according to the requirements in the Human Resources Code, Section [42.072](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072); and

• sends the letter to the appellant by both regular and certified mail, with a return receipt requested.

If the appellant has a permit but has not yet returned it to Licensing, the appellant must return it within five calendar days of receiving the letter.

In the case of a denial or revocation of a permit, the appellant whose permit has been denied or revoked may not apply for another permit before the fifth anniversary after the adverse action takes effect.

Operating without a permit is a violation of the law and results in legal action.

The Licensing director sends copies of the final letter to the assistant commissioner of Licensing and the Licensing attorney for the DFPS state office.

See also 7635 Sending an Operation Final Notice of Suspension, Revocation, or Denial.

Follow Up

Within two weeks after the letter is sent to the operation, the inspector:

a. determines whether the operation is continuing to care for children;

b. obtains the license, certification, registration, or listing if the operation has not returned it; and

c. documents whether the operation is still operating.

If the operation continues to operate, the director confers with the Licensing attorney for the DFPS state office to request legal action (see [7740](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7740) Injunctive Relief).

If a state-operated operation is involved, the director notifies the assistant commissioner of Licensing.

### 7770 Administrative Review and Due Process Hearing for a Designated Controlling Person (new title)

LPPH ~~December 2009~~ DRAFT 5482-CCL

*[Previously, this entire section (7770-7774) applied to residential licensing only. The entire section now applies to day care licensing as well. The highlighted portions reflect the policy that is new. Both residential and day care licensing are encouraged to read the section in its entirety.]*

Policy

Within seven days of notifying a permit holder about the intent to revoke the permit of a child care operation, the inspector designates the controlling persons whose actions contributed to the revocation of the operation’s permit. See [5400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5400.asp#LPPH_5400) Controlling Person*.*

The inspector may designate a person at an operation as controlling, regardless of whether the person’s name is submitted by the operation on [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person, if the person meets the definition of a controlling person.

DFPS Rules, 40 TAC [§745.905](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=905)

Each person designated as controlling is offered an opportunity to review and appeal the designation through the following:

• An administrative review conducted by Licensing staff

• A due process hearing conducted by the State Office of Administrative Hearings (SOAH)

At Licensing’s discretion, the administrative review regarding the designation may be combined with the review regarding the revocation of the operation’s permit. In addition, the administrative law judge may combine SOAH hearings that involve issues related to the same decision.

DFPS Rules, 40 TAC [§745.909](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=909)

A designated controlling person becomes a sustained controlling person when the revocation is final and:

• when the person has waived due process rights regarding the designation; or

• when the designation was upheld after exhausting due process rights.

DFPS Rules, 40 TAC [§745.907(b)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=907); [745.8855](http://info.sos.state.tx.us/pls/pub/readtac$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=8855)

#### 7771 Choosing the Persons to Designate as Controlling

LPPH ~~December 2009~~ DRAFT 5482-CCL (new item; current 7771 moved 7771.1)

Policy

After an inspector notifies a permit holder about the intent to revoke an operation’s permit, the inspector designates each controlling person who actively served as a controlling person when the events occurred that led to the revocation. The person may be designated, even if he or she is not actively serving as controlling person when the revocation is initiated.

DFPS Rules, 40 TAC [§745.905](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=905)

Procedure

In the CLASS system, on the *Designate Controlling Persons* page, the inspector:

1. evaluates the list of controlling persons who have actively been associated with the operation within the two years preceding the adverse action (including the controlling persons who are presently inactive);

and

1. designates the controlling person by selecting the checkbox in the *Designated* column;

or

1. selects the appropriate reason from the drop-down box in the *Reason not Designated* column.

Reasons Not to Designate a Controlling Person

The following chart explains when not to designate a controlling person:

| *Reason Not Designate* Is … | when … |
| --- | --- |
| *Not at Branch* (CPA only) … | the controlling person is associated with a branch of the CPA that is not involved in the events responsible for the revocation. |
| *Not responsible for revocation events* … | the controlling person is not involved in the events responsible for the revocation.  For example, the events leading to the revocation occurred only after a controlling person became inactive. |

##### 7771.1 Notifying Persons About the Intent to Designate

LPPH ~~December 2009~~ DRAFT 5482-CCL (currently 7771)

Procedure

Within seven days of sending an intent to revoke letter (CLASS Form 2880 Intent to Impose Adverse Action) to a permit holder, the inspector sends a copy of the intent to revoke letter and CLASS Form 2762 Intent to Designate a Controlling Person, by both certified and regular mail, to each person who has been designated as a controlling person for the operation.

Content of the Letter

The Intent to Designate a Controlling Person letter includes the following information:

a. The date that Licensing received [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person, with the person listed as a controlling person (or, if the person was not named as a controlling person by the operation, the date that Licensing decided to designate the person as controlling)

b. A statement explaining the intent to revoke the operation’s permit, indicating the operation’s address, and explaining that a copy of the intent to revoke letter is enclosed

c. A statement explaining the intent to designate the person as controlling due to the intent to revoke the operation’s permit

d. The facts to support Licensing’s decision to designate the person, if Licensing intends to designate the person as controlling and the operation did not include the person as a controlling person on the Form 2760 Controlling Person

e. A statement explaining that the legal authority for the action is Human Resources Code [§42.072(g)(2)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072) and (g)(4), and [§42.062](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.062)

f. A statement explaining the controlling person’s right to an administrative review and the procedures for requesting an administrative review, including the name of the person to whom a written request for an administrative review must be addressed

g. Notice of the right to request an administrative review within 15 days after receipt of the letter, if the person disagrees with the designation

h. A statement that the designation will be sustained when the revocation for the operation is final and:

• the designated controlling person has waived due process rights regarding the designation; or

• the designation for the controlling person is upheld after due process rights are exhausted

i. A statement explaining the consequences of being a sustained controlling person

j. The signature of the director of residential child care licensing, the district director, or his or her designee.

Enclosures

The inspector encloses:

1. Form 2880 Intent to Impose Adverse Action letter;
2. a copy of the Human Resources Code, [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm); and
3. a copy of DFPS Rules, 40 TAC [§§745.8809-745.8817](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=8809).

Delivering the Letter

The inspector:

• delivers the letter (Form 2880) to the controlling person either in person or by courier, and obtains a signed receipt; or

• sends the letter by both regular and certified mail, with a return receipt requested.

The inspector also sends a copy of the letter to the:

1. district manager;
2. Licensing attorney; and
3. supervisor.

#### 7772 Process of Providing an Administrative Review for the Designated Controlling Person

LPPH ~~December 2009~~ DRAFT 5482-CCL

Policy

The designated controlling person must be informed of the right to request an administrative review due to the designation (see [7710](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7710) Administrative Reviews).

The administrative review for each controlling person may be:

• combined with the operation’s administrative review regarding the intent to revoke its permit; or

• held separately for each designated controlling person.

DFPS Rules, 40 TAC [§745.909](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=909)

##### 7772.1 Adverse Action Is Overturned, Stopped, or Results in a Settlement

LPPH DRAFT 5482-CCL (new item; replaces current 7772.1)

Procedure

Adverse Action Is Overturned

If the person conducting the administrative review for the revocation overturns the decision to revoke the operation’s permit, the district director or residential manager stops the due process for each controlling person designated as a result of the revocation.

In the CLASS system, in the *Stop Controlling Person Designation Action and Reason* section of the *Controlling Person Designation Due Process* page, the director or manager:

a. selects *Stop* from the *Action* drop-down box;

b. enters the effective date in the *Effective Stop Date* field; and

c. enters the reason that the due process was stopped.

Within 15 days of the revocation being overturned, the inspector sends [Form 2766](http://intranet.dfps.txnet.state.tx.us/application/Forms/showFile.aspx?NAME=2766.doc) Stop Due Process of a Controlling Person, located in the DFPS automated forms system, to each designated controlling person. The letter notifies the controlling person that Licensing no longer seeks to designate the person as a controlling person.

Adverse Action Is Stopped

If the adverse action for the revocation of the operation’s permit is stopped with a reason of *Stop Adverse Action*:

• the due process for each controlling person designated as a result of the revocation is automatically stopped; and

• CLASS automatically populates the fields under the *Stop Controlling Person Designation Action and Reason* section on the *Controlling Person Designation Due Process* page.

If the adverse action for the revocation of the operation’s permit is stopped with a reason of *Settlement*, the district director or residential manager stops the due process for each controlling person designated as a result of the revocation.

In CLASS, in the *Stop Controlling Person Designation Action and Reason* section of the *Controlling Person Designation Due Process* page, the director or manager:

a. selects *Settlement* from the *Action* drop-down box;

b. enters the effective date of the settlement in the *Effective Stop Date* field; and

c. enters the reason for the settlement in the *Reason* narrative box, along with any conditions of the settlement relating to the controlling person.

Within 15 days of the revocation being stopped, the inspector sends Form 2766 Stop Due Process of a Controlling Person, located in the DFPS automated forms system, to each designated controlling person. The letter notifies the controlling person that Licensing no longer seeks to designate the person as a controlling person.

##### 7772.2 No Administrative Review Requested by a Controlling Person

LPPH ~~December 2009~~ DRAFT 5482-CCL

Procedure

If a designated controlling person does not request an administrative review within 15 days after receiving an intent to designate letter, the inspector takes the following actions in the CLASS system:

• Sets the *CP Administrative Review* field to *Waived*

• Sends CLASS Form 2763 Controlling Person Administrative Review Decision Letter to the designated controlling person

If the designated controlling person does not request an administrative review, but the operation does request an administrative review due to the revocation of its permit, the inspector postpones sending the notice offering a due process hearing to the controlling person until the administrative review is completed and the decision to revoke the operation’s permit is upheld.

If the administrative review for the revocation of the operation’s permit is overturned or stopped, the inspector follows the procedures explained in 7772.1 Adverse Action Is Overturned, Stopped or Results in a Settlement.

See also:

[7713.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7713_1) Determining Whether a Request for an Administrative Review Meets the Due Date

7772.5 Notifying Person About Licensing’s Decision to Designate Controlling Person

##### 7772.3 Decision to Designate a Controlling Person Is Overturned

LPPH DRAFT 5482-CCL (new item; current 7772.3 moved to 7772.4)

*(Previously 7772.1)*

If the person conducting the administrative review overturns the decision to designate a controlling person, he or she sends CLASS Form 2763 Controlling Person Administrative Review Decision letter to the person by both certified and regular mail within 15 days of the administrative review. The purpose of the letter is to inform the person that the designation is overturned.

If the operation requested an administrative review due to the revocation of its permit, the administrative review for the controlling person is postponed until the administrative review for the revocation is complete and the decision to revoke the operation’s permit is upheld.

If the administrative review for the revocation of the operation’s permit is overturned or stopped, the inspector follows the procedures explained in 7772.1 Adverse Action Is Overturned, Stopped, or Results in a Settlement.

##### 7772.4 Decision to Designate a Controlling Person Is Upheld

LPPH ~~December 2009~~ DRAFT 5482-CCL (currently 7772.3)

Procedure

If the person conducting the administrative review upholds the decision to designate the controlling person, he or she sends CLASS Form 2763 Controlling Person Administrative Review Decision Letter to the individual by both certified and regular mail within 15 days of the administrative review.

If the operation requested an administrative review due to the revocation of its permit, the administrative review for the controlling person is postponed until the administrative review for the revocation is completed and the decision to revoke the operation’s permit is upheld.

If the administrative review for the revocation of the operation’s permit is overturned or stopped, the inspector follows the procedures explained in 7772.1 Adverse Action Is Overturned, Stopped, or Results in a Settlement.

Also see 7772.5 Notifying Persons About Licensing’s Decision to Designate Controlling Person.

##### 7772.5 Notifying Persons About Licensing’s Decision to Designate a Controlling Person

LPPH ~~December 2009~~ DRAFT 5482-CCL (currently 7773)

Policy

Each person who continues to be designated as controlling after the administrative review or the offer of an administrative review receives a letter (CLASS Form 2763 Controlling Person Administrative Review Decision), offering a due process hearing. See 7730 Due Process Hearings.

The due process hearing may be:

• combined with the operation’s hearing; or

• held separately for each designated controlling person at the discretion of the judge, in the case of a hearing conducted by the State Office of Administrative Hearings (SOAH).

DFPS Rules, 40 TAC [§745.909](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=909)

###### 7772.51 Content of CLASS Form 2763 (Controlling Person Administrative Review Decision Letter)

LPPH DRAFT 5482-CCL (new item)

*(Previously part of 7773.)*

Procedure

The inspector notifies a designated controlling person about the right to a due process hearing, in writing, by sending the CLASS Form 2763 Controlling Person Administrative Review Decision Letter, with a return receipt requested, and includes the following information:

a. A statement explaining that the person was informed in writing about Licensing’s intent to designate him or her as controlling, the reasons for the designation, and the offer of an administrative review.

The letters are and enclosed along with a copy of the letter sent to the operation regarding Licensing’s decision to impose adverse action letter against the operation.

b. A statement:

• explaining that the person did not request an administrative review; or

• acknowledging that the person requested an administrative review and explaining that the decision to designate the person as controlling was upheld. In this case, the inspector includes the date of the review and the name of the person who conducted the review.

c. A statement explaining that the legal authority for the action is Human Resources Code [§42.072](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)(g)(2) and (g)(4), and [§42.062](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.062)

d. A statement informing the person about the right to a due process hearing and explaining that person’s request for a hearing must be postmarked within 30 days after the person receives the letter (see 7772.52 Instructions for Requesting a Due Process Hearing to Appeal the Designation of Controlling Person).

e. The signature of the district director or manager or his or her designee.

###### 7772.52 Instructions for Requesting a Due Process Hearing to Appeal the Designation of Controlling Person

LPPH DRAFT 5482-CCL (new item)

*(Previously part of 7773.)*

When preparing to send CLASS Form 2763 Controlling Person Administrative Review Decision to a person designated as a controlling, the inspector must include a statement explaining that the person may appeal the decision by sending a written request for a due process hearing to:

Docket Clerk

Legal Services, Mail Code Y-956

Texas Department of Family and Protective Services

P.O. Box 149030

Austin TX 78714-9030;

The inspector instructs the person to:

• state in the letter the reasons why the person should not be designated as controlling; and

• request that a copy of the request for a due process hearing be sent to the inspector who sent the letter.

###### 7772.53 Consequences of a Controlling Person Not Responding to a Letter About the Right to Appeal (CLASS Form 2763)

LPPH DRAFT 5482-CCL (new item)

*(Previously part of 7773.)*

Procedure

If the person designated as a controlling person does not submit a request for a due process hearing within 30 days of receiving CLASS Form 2763 Controlling Person Administrative Review Decision letter, the person waives his or her rights to a hearing, and the designation is sustained when the revocation of the operation’s permit is final.

A person who is a sustained controlling person:

• cannot be issued a permit; and

• cannot be a controlling person in a child care operation for a five year period.

###### 7772.54 Enclosures When Instructing a Person About the Right to Appeal a Designation as Controlling (CLASS Form 2763)

LPPH DRAFT 5482-CCL (new item)

*(Previously part of 7773.)*

Procedure

When instructing a person designated as controlling about the right to appeal, the district director, manager, or designee, encloses with CLASS Form 2763 Controlling Person Administrative Review Decision letter:

a. CLASS Form 2762 Intent to Designate Controlling Person;

b. Form 2880 Intent to Impose Adverse Action Letter;

c. Form 2878 Decision to Impose Adverse Action Letter;

d. a copy of Human Resources Code, [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm);

e. a copy of DFPS Rules, 40 TAC, [§§745.8831-745.8855](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=19&ch=745&sch=M&div=2&rl=Y); and

f. a copy of the Request for a Due Process Hearing Regarding a Controlling Person Designation form (the last page of Form 2763).

###### 7772.55 Delivering the Letter Notifying a Person About the Right to Appeal a Designation as Controlling (CLASS Form 2763)

LPPH DRAFT 5482-CCL (new item)

*(Previously part of 7773.)*

To notify a person about the right to appeal a designation of Controlling, the district director, manager or designee:

• delivers the decision letter (CLASS Form 2763 Controlling Person Admin Review Decision Letter) in person to the controlling person or sends it by courier, and obtains a signed receipt; or

• sends the letter by both regular and certified mail to the controlling person, with a return receipt requested.

The district director or manager sends a copy of the letter to the director, Licensing attorney, supervisor, and inspector responsible for the operation.

#### 7773 Providing an Due Process Hearing for a Designated Controlling Person

LPPH ~~December 2009~~ DRAFT 5482-CCL

Policy

A designated controlling person must be informed about the right to request a due process hearing to contest the designation. See 7730 Due Process hearings.

The due process hearing for each controlling person may be:

• combined with the operation’s due process hearing, regarding the decision to revoke its permit; or

• held separately for each designated controlling person.

DFPS Rules, 40 TAC [§745.909](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=909)

##### 7773.1 Controlling Person Did Not Request a Due Process Hearing

LPPH DRAFT 5482-CCL (new item)

Procedure

If the designated controlling person does not request a due process hearing within 30 days after receiving the Controlling Person Administrative Review Decision Letter, CLASS Form 2763, the inspector postpones sending the final notice to the controlling person until the due process hearing for the revocation is waived or upheld.

If the Due Process Hearing Overturns a Decision to Revoke

If a due process hearing overturns the decision to revoke an operation’s permit, the district director or residential manager stops the due process for each controlling person designated as a result of the revocation.

In the CLASS system, in the *Stop Controlling Person Designation Action and Reason* section of the *Controlling Person Designation Due Process* page, the director or manager:

a. selects *Stop* from the *Action* drop-down box;

b. enters the effective date in the *Effective Stop Date* field; and

c. enters the reason that due process was stopped.

Within 15 days of the revocation being overturned, the inspector sends Stop Due Process of a Controlling Person, Form 2766, located in the DFPS automated forms system, to the controlling person. The letter notifies the controlling person that Licensing no longer seeks to designate the person as a controlling person.

If the Due Process Hearing for Adverse Action Is Upheld or Is Not Requested

If the permit holder waived the right to a due process hearing for the revocation of the operation’s permit, or if the due process hearing upholds the decision to revoke the operation’s permit, the inspector must do as follows within 15 days:

• Change the *CP Appeal Hearing* (due process) field from *Pending* to *Waived*

• Send a final notification letter (CLASS Form 2764 Final Sustained Controlling Person) to the controlling person

See 7773.3 Final Notice to Sustain the Designation of Controlling Person.

##### 7773.2 When a Controlling Person Requests a Due Process Hearing to Appeal the Designation

###### 7773.21 A Designation of Controlling Is Upheld at a Due Process Hearing

LPPH DRAFT 5482-CCL (new item)

Procedure

If a due process hearing conducted by the State Office of Administrative Hearings (SOAH) upholds a person’s designation as a controlling person, the district director, manager, or his or her designee takes the following steps in the CLASS system:

• Changes the *CP Appeal Hearing* field from *Requested to Upheld*

• Sends CLASS Form 2764 Final Sustained Controlling Person to the controlling person with 30 days of receiving the court’s decision.

See 7773.3 Final Notice to Sustain the Designation of Controlling Person.

###### 7773.22 A Revocation Is Upheld at a Due Process Hearing but the Designation of Controlling Person Is Overturned

LPPH DRAFT 5482-CCL (new item)

Procedure

If the controlling person requests a due process hearing and the due process hearing overturns the decision to sustain the designation of controlling person, the district director, manager, or his or her designee changes the *CP Appeal Hearing* field from *Requested* to *Overturned* in the CLASS system*.*

###### 7773.23 A Revocation and Designation Are Both Overturned at a Due Process Hearing

LPPH DRAFT 5482-CCL (new item)

Procedure

If the due process hearing overturns a decision to revoke an operation’s permit, the district director or residential manager stops the due process for each controlling person designated as a result of the revocation.

In the CLASS system, in the *Stop Controlling Person Designation Action and Reason* section of the *Controlling Person Designation Due Process* page, the director or manager:

a. selects *Stop* from the *Action* drop down box;

b. enters the effective date in the *Effective Stop Date* field; and

c. enters the reason that due process was stopped.

##### 7773.3 Final Notice to Sustain the Designation of Controlling Person

LPPH ~~December 2009~~ DRAFT 5482-CCL (currently 7774)

Policy

If Licensing’s findings are upheld for the designation of controlling person and the revocation is made final, the district director, manager or designee, notifies the controlling person that the decision to designate the person as controlling is final when all administrative appeals and challenges have been exhausted.

A designated controlling person becomes a sustained controlling person when the revocation is final and:

• the person has waived his or her right to due process regarding the designation; or

• the designation is upheld after exhausting his or her due process rights.

DFPS Rules, 40 TAC §§[745.907](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=907); [745.8855](http://info.sos.state.tx.us/pls/pub/readtac$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=8855)

###### 7773.31 The Contents of the Letter to Notify a Controlling Person About a Sustained Designation (CLASS Form 2764)

LPPH DRAFT 5482-CCL (new item)

(New section; previously part of 7774)

Procedure

The district director, manager, or his or her designee, notifies a person that the designation of controlling person has been sustained by sending CLASS Form 2764 Final Sustained Controlling Person to the person by both regular and certified mail, with a return receipt requested, and includes the following information:

a. A statement explaining that the decision to sustain the person as controlling is final according to the Human Resources Code, §§[42.072(g)(2)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072) and [42.046](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.046)

b. A statement explaining that:

• the person did not request a due process hearing, the time for making such a request has expired, and the decision to revoke the operation’s permit is final (include the name and address of the operation), or

• that the person was informed that Licensing’s decision to designate the person as controlling was upheld after a due process hearing, and the decision to revoke the license is final (include the name and address of the operation and the date that the person was informed); and

c. A statement explaining that a sustained controlling person cannot be issued a permit and cannot serve as a controlling person for a five-year period. The statement must also include the date that the person will no longer be prohibited.

1. The signature of the district director, manager, or his or her designee.

###### 7773.32 Delivering the Letter Notifying a Controlling Person About a Sustained Designation (CLASS Form 2764)

LPPH DRAFT 5482-CCL (new item)

(New section; previously part of 7774)

Procedure

To notify a person that the designation of controlling has been sustained, the district director, manager, or his or her designee:

• delivers the notification letter (CLASS Form 2764 Final Sustained Controlling Person) to the controlling person in person, or sends it by courier, and obtains a signed receipt; or

• sends the letter by both regular and certified mail, with a return receipt requested.

The district director, manager, or his or her designee, sends a copy of the letter to the director of Licensing, Licensing attorney, supervisor, and the inspector responsible for the operation.

##### 7773.4 Reviewing the Status of a Sustained Controlling Person in CLASS

LPPH DRAFT 5482-CCL (new item)

Policy

When a person is sustained as a controlling person as a result of a revocation of the operation’s permit, the person is no longer allowed to be a controlling person at any operation for five years.

DFPS Rules, 40 TAC §[745.907](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=907)

Procedure

Each inspector responsible for an operation in which a sustained controlling person is actively associated follows up to ensure that the sustained controlling person is removed from their role immediately.

The inspector:

• sends Match of an Ineligible Controlling Person, [Form 2765](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2765.doc), located in the DFPS automated forms system, to the operation; and

• follows up with the operation within 15 days of sending the notification to ensure that the sustained controlling person is removed.

If the operation fails to remove the sustained controlling person from the role of controlling person, the inspector follows the procedures in 5425.2 Notifying an Operation About an Ineligible Controlling Person.

#### 7774 Documenting in the AARS When the Denial or Revocation of a Permit Is Final or the Role of Controlling Person Is Sustained

LPPH DRAFT 5482-CCL (new item)

Policy

The designated user of the HHSC Adverse Action Record Sharing (AARS) system enters an operation’s information into the AARS when:

• the denial or revocation of an operation’s permit is final and is based on one of the following reasons:

a. The applicant committed an act or omission that resulted in the physical or mental harm to an individual;

b. The applicant is a threat to the health, safety, or well-being of an individual;

c. The applicant engaged in the physical, mental, or financial exploitation of an individual; or

d. The applicant has committed an act or omission that renders the person unqualified or unfit to fulfill the obligations of the license; and

• the designation of the permit holder’s role as a controlling person is sustained, if the operation’s permit was revoked.

*DFPS Rules, 40 TAC §*[*745.907*](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=907)

Texas Government Code [§531.953](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.531.htm#531.953)

##### 7774.1 Entering Details About an Operation in the HHSC Record Sharing System”

LPPH DRAFT 5482-CCL (new item)

Procedure

The designated user of the HHSC Adverse Action Record Sharing (AARS) system enters the following information about an operation when the criteria are met that are explained in 7774 Documenting in the AARS When the Denial or Revocation of a Permit Is Final or the Role of Controlling Person Is Sustained:

a. Operation’s name

b. Operation’s number;

c. Type of permit

d. Operation type

e. Operation’s address

f. The action taken (that is, denial or revocation)

g. The basis of the action (that is, the reason for the denial or revocation)

h. The effective date of the action (that is, the date the denial or revocation became final)

i. The end date of the action (that is, five years from the date that the denial or revocation became final)

j. Summary of the action taken

##### 7774.2 Entering Information for the Controlling Persons

LPPH DRAFT 5482-CCL (new item)

Procedure

When an operation’s permit is denied, the designated user of the HHSC Adverse Action Record Sharing (AARS) system enters information for all controlling persons documented in CLASS for the operation.

When an operation’s permit is revoked, the designated user of AARS enters the information for all controlling persons whose designation is sustained.

The information entered for controlling persons by the designated user is as follows:

a. First, middle, and last name

b. Date of birth

c. Driver’s license number and state, if known;

d. Address

e. Status (*Identified* for denials and *Sustained* for revocations)

## Appendix 2000-3: The Pre-Application Interview Conference

LPPH ~~January 2007~~ DRAFT 5482-CCL

(Updated with form numbers; removed First Aid chart from list of forms to provide an applicant)

The process for obtaining a permit is designed to ensure the protection of children by establishing a cooperative relationship between DFPS and the potential applicant or applicant.

The inspector covers the following points in the pre-application interview conference, as appropriate:

Regulated and Exempt Operations

Licensing staff explain the types of operations that Licensing regulates and the types that are exempt or not subject to regulation.

See:

[2200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.jsp#LPPH_2200) Types of Child Care Permits and Multiple Operations

[2300](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.jsp#LPPH_2300) Facilities Exempt from Regulation

DFPS Rules, 40 TAC §§[745.37](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=37); [745.113](http://info.sos.state.tx.us/pls/pub/readtac$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=113)

The Applicant’s and Governing Body’s Responsibilities

Licensing staff explain the responsibilities of the applicant or governing body.

If an application is returned three times within one year because it is incomplete, the applicant must wait one year before submitting another application.

Licensing staff have 21 days to review each submission for completeness.

After an application is accepted, Licensing staff have two months to review the application and decide whether to issue or deny a permit.

When an Application is Accepted

If an application is accepted, Licensing staff provide the operation with information on the following:

1. The time frames for the licensing process

2. The steps in the regulatory process for each type of permit

3. The specific orientation requirements for each type of permit

4. The notification requirements when an operation changes ownership, location, or the type of child care provided and the affect that such changes have on the operation’s permit

5. Licensing’s responsibility to provide technical assistance

6. The minimum standards (how the standards define the minimum acceptable level of care allowable)

7. The requirement that the operation must comply with the standards at all times

8. The qualifications for a director of child day care, or the requirements for a licensed administrator of residential child care and the qualifications for other professional staff required at a residential operation

9. [Form 2948](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2948.doc) Plan of Operation for Licensed Child-Care Operations for child day care, or documentation that must be submitted with an application for residential child care, as required by the minimum standards

10. Fire and sanitation inspections and gas-pipe pressure tests

11. Zoning codes, building codes, and other legal requirements that are not enforced by Licensing but that affect the operation

12. The permit fee

13. Background checks for criminal history or Central Registry

14. Compliance with the requirements on submitting controlling persons

15. Form 2985 Affidavit for Applicants for Employment With a Licensed Operation or Registered Child Care Home

16. The franchise tax certificate of good standing (Certificate of Account Status from the Texas Comptroller of Public Accounts), for-profit corporations or limited liability companies only

17. The requirements for Liability insurance

18. The pre-issuance evaluation (*Standard x Standard*)

19. The waiver/variance concept and procedure

20. Denial of a permit

21. Citation of deficiency and posting requirement

22. Monitoring policy and processes

23. The transition from obtaining an initial permit to a nonexpiring permit

24. The reporting and investigative process

25. Administrative reviews

26. Administrative suspension

27. Remedial actions, including corrective action, administrative penalties, and adverse action (including the prohibition from applying for five years after a permit has been denied or revoked and the consequences of being designated as a controlling person)

28. The information on open records and compliance with open records law, as published on the Web page [Search Texas Child Care](http://www.dfps.state.tx.us/Child_Care/Search_Texas_Child_Care/CCLNET/Source/CPA/ppSearchTXChildCare2.aspx)

29. Licensing’s consultation services and training

30. Reporting abuse or neglect

****Forms and Other Materials****

Licensing staff provide the operation with information on the following **forms and other materials,** as appropriate:

1. The specific application required for a particular permit (see 3242 How to Evaluate the Application).

2. [Form 2911p](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2911P.doc) Governing Body/Director Designation (child day care) or [Form 2819](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2819.doc) Governing Body/Administrator or Executive Director Designation Form (residential care)

3. [Form 2982](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2982.doc) Personal History Statement

4. [Form 2971](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2971.doc) Request for Background Check

5. [Form 2988a](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2988a.doc) Child Care Fee Schedule

6. [Form 2948](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2948.doc) Plan of Operation for Licensed Child Care Operations (child day care)

7. The forms listing the documentation required during the application process for residential operations:

[Form 2784](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2784.doc) General Residential Operation and Residential Treatment Center

[Form 2785](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2785.doc) Child-Placing Agency

[Form 2786](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2786.doc) Independent Foster Home

8. [Form 2760](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Persons

9. [Form 2962p](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2962.doc) Verification of Insurance

10. [Form 2985p](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2985.doc) Affidavit for Applicants for Employment with a Child Care Facility or RFH

11. The information packet for public hearings (for residential care)

12. The operation’s floor plan

13. [Form 2958](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2958.pdf) The Keeping Children Safe poster

14. The notification poster for center care ([Form 2957](http://www.dfps.state.tx.us/Child_Care/Information_for_Providers/cclforms.asp)) and for home-based care ([Form 2957b](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2957b.doc))*.*

15. The minimum standards for care

16. [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm), Human Resources Code (Regulation of Child Care Facilities)

17. [Chapter 43](http://www.statutes.legis.state.tx.us/Docs/HR/word/HR.43.doc), Human Resources Code (Regulation of Child Care Administrators)

18. The Applicant’s Guide to Listed, Registered, and Licensed Child Care