## 2300 Determining Whether a Program Is Subject To or Exempt From Regulation

LPPH DRAFT 6663-CCL (new)

Policy

A program is not subject to regulation if it is not a type of child care operation that is subject to DFPS regulation. Such a program does not have to meet the requirements of a specific exemption under Texas Human Resources Code (HRC) [§42.041(b)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041).

An exempt program would be subject to regulation if it did not meet the requirements of a specific exemption under Texas Human Resources Code (HRC) [§42.041(b)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041).

A program that is exempt from DFPS regulation or is otherwise not subject to DFPS regulation may operate legally without:

• receiving a permit (license, certification, registration, or listing) from Licensing; or

• complying with the statutes, rules, or standards that govern regulated child care in Texas.

The following programs are exempt from licensure and certification based on the Texas Human Resources Code [[§42.041(b)(2)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)and DFPS Rules, Texas Administrative Code [§§745.115](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=115), [745.117](http://info.sos.state.tx.us/pls/pub/readtac$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=117), [745.119](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=119), and [745.129](http://info.sos.state.tx.us/pls/pub/readtac$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=129):

a. Operations that are regulated by other governmental entities

b. Operations of limited duration

c. Certain educational facilities and programs

d. Certain miscellaneous programs

An exempt program must inform Licensing when it no longer meets any criterion for the exemption. DFPS may seek injunctive action, civil penalties, or both against a person who:

• knowingly fails to meet the requirements of an exemption and engages in activities that require a license or registration from DFPS; or

• fails to inform Licensing about a change in the status of a program that would require the program to be licensed or registered.

Texas Human Resources Code [§42.075](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.075)

Moreover, a person may be prosecuted for a Class B misdemeanor for operating a child care operation without the appropriate permit from DFPS.

Texas Human Resources Code [§42.076](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.076)

### 2310 Determining Whether A Program Is Subject To Regulation

LPPH DRAFT 6663-CCL (new)

Policy

Licensing staff may become aware of a program that is explicitly exempt from or otherwise not subject to DFPS regulation when:

• a report of an illegal operation is being investigated; or

• a program submits an exemption determination form.

Licensing staff must first determine whether the program meets the statutory definition of a type of operation that is subject to DFPS regulation.

If the Licensing staff determines that the program may be an operation that is subject to regulation, he or she informs the program that it must submit:

• an application for a permit; or

• the appropriate exemption determination form.

Texas Human Resources Code [§§42.002(3)(9)(16)(17)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002), [42.151(1)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.151) and [42.201(3)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.201)

DFPS Rules, 40 TAC [§§745.111](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=111), [745.113](http://info.sos.state.tx.us/pls/pub/readtac$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)

#### 2311 Determining Whether a Program is Subject to Regulation During an Investigation of an Illegal Operation

LPPH DRAFT 6663-CCL (new)

Procedure

When investigating a potential illegal operation, Licensing staff must determine whether the program is subject to regulation. Licensing staff may take the following steps to help determine whether the program is subject to regulation:

a. Request that the program complete and return the appropriate exemption determination form and any supporting documentation (this is a request only, since the program is not required to comply).

b. If the program submits the exemption determination form:

• evaluate the information, and

• consult with the Licensing supervisor or the designated regional subject matter expert to determine whether the program is subject to regulation or if additional information is needed to make a decision.

c. If the program does not submit the exemption determination form:

• obtain as much information as possible from the program, and

• consult with the Licensing supervisor or the designated regional subject matter expert to determine whether the program is subject to regulation or if additional information is needed to make a decision.

If the Program Is Not Subject to Regulation

After investigating a program as a potential illegal operation and determining that it is not subject to regulation, staff:

• notifies the program that it is not subject to regulation by sending the *Investigation Letter* (CLASS Form 2896) located on the *Investigation Main* page (see [6557](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6400.asp#LPPH_6557) Procedures When an Illegal Operation Is Determined to Be Not Subject to Regulation); and

• enters a *Closure Date* and selects *Not Subject To Regulation* from the *Closure Reason* dropdown menu on the *Illegal Operation* main page.

If the Program May Be Subject to Regulation

If Licensing staff determines the program may be subject to regulation, and the program wants to claim an exemption, see [2320](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2320) Determining Whether a Program Is Exempt From Regulation.

If the program wants to apply for a permit, see [3130](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3000.asp#LPPH_3130) The Application Process.

#### 2312 Determining Whether a Program is Subject to Regulation When Evaluating an Exemption Determination Form

LPPH DRAFT 6663-CCL (new)

Procedure

If a review of an exemption determination form indicates that a program does not meet the statutory definition of a facility, family home, small employer based child care, or a temporary shelter, Licensing staff:

a. notifies the program in writing that it is not subject to regulation by sending the Exemption Response letter (Form 2807) located on the DFPS automated forms system; and

b. completes the *Exemption Requests and Background Check Only Entities* page as follows:

1. enter the date the request was received in the *Exemption Request Received* field;

2. enter the date a decision is made in the *Action Date* field;

3. select *Return* from the *Action* drop down menu (*Action* Field);

4. enter the date the operation was notified and the reason for the decision in the *Action Reason* narrative box;

5. enter the date the exemption is closed in the *Closure Date* field) in CLASS on the Main page; and

6. select *Not Subject to Licensing Regulation* from the *Closure Reason* field drop down menu.

If it is determined that the program meets the requirements to be exempt, Licensing staff follows the steps in [2323](file:///C:\Users\DEESCL\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\25FDXIRS\Documenting%20Exemption%20Decisions%20in%20CLASS) Documenting Exemption Decisions In Class.

If it is determined that the program is not exempt and is subject to regulation, Licensing staff follows the steps in 2322.21 Program Is Not Exempt.

### 2320 Determining Whether a Program Is Exempt From Regulation

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2310)

Policy

A program may be exempt from regulation based on statute and administrative rule.

To make a determination about an exemption, Licensing requires the program to:

• submit a description of its program on one of the following exemption determination forms located on the DFPS automated forms system:

Form 2820 Educational Facility Exemption;

[Form 2832](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2832.pdf) Exemption Request: Single Skill Program Operating During the School Year;

[Form 2833](http://intranet.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2833.pdf) Exemption Request: Single Skill Program Operating During the Summer;

Form 2838 Miscellaneous Entities Exemption;

Form 2839 Program of Limited Duration Exemption; and

• include additional documentation to verify the program description.

See 2322 Processing the Exemption.

Texas Human Resources Code, [§§42.041](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041); [42.002(9)(16)(17)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002), [42.052(c)(d)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.052)

DFPS Rules, 40 TAC [§§745.115](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=115); [745.117](http://info.sos.state.tx.us/pls/pub/readtac$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=117), [745.119](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=119), [745.129](http://info.sos.state.tx.us/pls/pub/readtac$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=129), and [745.131](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=131)

#### 2321 Criteria Used to Determine If a Program is Exempt

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2311)

To determine whether a program is exempt from regulation, Licensing staff request that the program submit the appropriate exemption determination form (see 2320 Determining Whether a Program Is Exempt From Regulation for a list of these forms).

The exemption determination forms collect the following information:

a. The purpose of the program

b. The persons or group responsible for care

c. The location of the facility

d. The days and months that child care is planned or provided

e. The hours that child care is planned or provided

f. The ages of the children in care

g. The projected duration of the child-care arrangement

h. The child’s relationship to the child-care provider

i. The number of children in care

j. The use of space when a regulated program operates at the same location

k. Details about the program’s activities and services that may meet the criteria for exemption from regulation

#### 2322 Processing the Exemption

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2312, 2312.1, 2312.2)

Procedure

If a program claims to be exempt from regulation by Licensing, based on a specific exemption in Texas Administrative Code [§§745.115](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=115); [745.117](http://info.sos.state.tx.us/pls/pub/readtac$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=117), [745.119](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=119), and [745.129](http://info.sos.state.tx.us/pls/pub/readtac$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=129), Licensing staff take the following steps:

a. Require the person in charge of the program to complete and return the appropriate exemption determination form and any supporting documentation within 14 days of receiving the form from Licensing.

b. Enter the exemption into CLASS on the *Exemption Requests & Background Check Only Entities* page.

c. Evaluate the information received.

d. Consult with the Licensing supervisor or the designated regional subject matter expert to determine whether additional information is needed to make a decision.

e. Conduct an inspection of the operation, if necessary.

f. Notify the person in charge of the program about Licensing’s decision regarding the exemption claim. Notification must be provided:

• within 21 days after Licensing staff receive all of the information necessary to make the determination; and

• in writing, by sending the appropriate Exemption Response letter located in the DFPS automated forms system.

DFPS Rules, 40 TAC [§§745.131](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=131); [745.133](http://info.sos.state.tx.us/pls/pub/readtac$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=133)

Exemptions for Educational Programs or Operations

A person who believes his or her educational program is exempt under the provisions of DFPS Rule [§745.119(1),(2),(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=119) may contact Licensing to determine if an exemption form needs to be completed.

DFPS Rule [§745.131](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=131)

##### 2322.1 Additional Requirements for Processing Exemptions for Educational Programs

###### 2322.11 Actions Taken by the Accrediting Organization When an Educational Program Is Exempt

LPPH DRAFT 6663-CCL (previously 2362)

When educational programs are exempt from regulation under [§745.119(4)](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=119), the accrediting organization sends the following to the designated regional subject matter expert:

a. a completed Form 2820 Educational Facility Exemption Form, along with documentation that the accrediting organization has its own standards for health, safety, fire, and sanitation standards that are equal to those required for licensed operations or with documentation that the organization requires members to comply with state, county, or municipal health, safety, fire, and sanitation codes;

b. a monitoring plan for review by Licensing designed to ensure that members comply with either the organization’s standards for health, safety, fire, and sanitation or the health, safety, and fire codes of the state, county, or municipality; and

c. the names and addresses of the other educational programs or operations that are members of the accrediting organization. This list must be updated when new members are accredited or members cease to be accredited.

Also see [2371](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2371) Standard Educational Programs.

DFPS Rule, 40 TAC [§745.127](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=127)

###### 2322.12 When to Inspect an Educational Program That Is Exempt

LPPH ~~November 2010~~ DRAFT 6663-CCL (new)

If a person believes that his or her educational program or operation is exempt under DFPS Rule [§745.119(1),(2),(3),(4), or (5)](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=119), Licensing staff:

• follow procedures in 2322 Processing the Exemption; and

• inspect the educational facility, if necessary, to observe:

a. activities,

b. hours of operation,

c. ages of the children in care; and

d. grade clustering.

##### 2322.2 Program Is Exempt

LPPH ~~ADD DATE~~ DRAFT 6663-CCL (previously 2300)

Procedure

If Licensing staff determines that a program is exempt from DFPS regulation, Licensing staff notifies the operation and follows procedures in 2325 Closing an Exempt Program in CLASS.

###### 2322.21 Program Is Not Exempt

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2312.4, 2312.6)

Procedure

If Licensing staff determines that a program is not exempt and subject to regulation, the program must take immediate steps to become regulated.

Licensing staff:

• informs the operation in writing using the Exemption Response letter located in the DFPS automated letters system that the program:

1. is operating in violation of Texas Human Resources Code, [§42.041](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041) and [§42.052](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.052),

2. has 14 days from the date the letter is received to submit an application to become a regulated operation,

3. will be operating illegally, if it does not submit the application within 14 days, and

4. has a right to request an administrative review to dispute the decision; and

• completes the *Exemption Requests and Background Check Only Entities* page in CLASS as follows:

1. enter the date a decision is made in the *Action Date* field;

2. select *Not* *Exempt* from the *Action* drop down menu; and

3. enter the date the operation was notified and the reason for the decision in the *Action Reason* narrative box.

When a program does not meet the requirements to be exempt from Licensing regulation and fails to take immediate steps to meet the requirements for becoming regulated, Licensing staff:

a. informs the Licensing supervisor that the program knowingly failed to meet the requirements of an exemption and engaged in activities that require a license or registration from DFPS;

b. documents the information in a *Chronology* (type *Application*);

c. enters an intake for the operation that is operating illegally (See [6222](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6222) Assessing an Intake Report for Priority and [6251.2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6251_2) Entering Reports of Illegal Operations); and

d. leaves the exemption open in CLASS until the investigation is complete.

Licensing staff does not close the exemption in CLASS until the program meets the requirements for becoming regulated or meets the criteria to be exempt from Licensing regulation. See 2325 Closing an Exempt Program in CLASS.

##### 2322.3 Program Disagrees That It Is Not Exempt

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2312.5)

A program that disagrees with Licensing’s decision that it must be regulated may request an administrative review. See [7710](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7710) Administrative Reviews.

#### 2323 Documenting Exemption Decisions in CLASS

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2313)

Licensing staff document in the CLASS system all determinations made about an exemption status.

Staff use the *Action Reason* narrative box in CLASS:

• to provide details about the case; and

• to include information that is not clearly explained on the appropriate exemption determination form.

It is not appropriate to leave the *Action Reason* narrative box blank or enter a Texas Administrative Code rule number as a reference, instead of entering details.

#### 2324 Documenting Supplements to an Exemption Decision

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2314)

Licensing staff document in a *Chronology* (type *External Documentation*) whether any of the following supplemental information is submitted along with the appropriate exemption determination form:

a. A copy of the license issued by another government entity

b. Accreditation documents

c. Information about municipal ordinances that govern such programs

d. Standards of care

e. Informational and advertising materials

f. Floor plan

g. Shopping center or mall design plan

h. State, county, or municipal health, safety, and fire codes

#### 2325 Closing an Exempt Program in CLASS

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2315)

Exempt programs display like *closed operations* in CLASS. To close an exempt program in CLASS, Licensing staff complete the *Exemption Requests and Background Check Only Entities* page as follows:

a. enter the date a decision is made in the *Action Date* field;

b. select *Exempt* from the *Action* drop down menu;

c. enter the date the operation was notified and the reason for the decision in the *Action Reason* narrative box;

d. enter the date the exemption is closed in the *Closure Date* field; and

e. select the appropriate exemption category from the *Closure Reason* drop down menu.

### 2330 When Exempt Programs Request Regulation

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2320)

Policy

Programs that meet the requirements to be exempt from Licensing regulation based on the statute, administrative rule, or both, may request a permit to be licensed, registered, or listed only if the program needs a permit to accept federal or state funding.

A program that accepts a permit under these circumstances must comply with all applicable provisions of the Texas Human Resources Code, [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#00), administrative rules, and minimum standards.

DFPS Rules, 40 TAC [§§745.141](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=141); [745.143](http://info.sos.state.tx.us/pls/pub/readtac$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=143)

See:

[2350](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp" \l "LPPH_2350) Governmental Entities That Are Exempt from DFPS Regulation

[2360](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2350) Programs of Limited Duration That Are Exempt From Licensure and Certification

### 2340 Exempt Programs That Operate in the Same Locations as Regulated Operations

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2330, 2312.3)

Policy

If a governing body runs an exempt program and an operation that is subject to DFPS regulation at the same location, they must be separate from each other.

To be considered separate, the programs must:

a. be located in separate buildings, operated in separate areas of the same building, or operated in the same building at different times;

b. use separate caregivers, or use caregivers who provide care for only one program at a time; and

c. have a written plan that describes how the caregivers from each program supervise children when using shared spaces such as restrooms and indoor and outdoor activity areas at the same time.

If the programs cannot be kept separate, both are subject to regulation.

DFPS Rules, 40 TAC [§745.139](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=139)

Procedure

To ensure that an exempt program at the same location as one that is subject to regulation operates separately, Licensing staff request the person who operates the programs to submit documentation describing how the program complies with the requirement that the programs are kept separate.

After reviewing the information, if Licensing staff cannot determine whether the two programs operate separately, staff:

• discuss with their supervisor and the designated regional subject matter expert whether additional information is needed; and

• conduct an inspection at the programs, if necessary, to observe whether the program is in compliance with the requirements that the programs are kept separate.

Also see:

2322 Processing the Exemption

[4127](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4127) Other Types of Inspections

#### 2341 When an Exempt Educational Program Must Obtain a Permit

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2372)

An educational program that is exempt from regulation must obtain a permit for the portion of the program that:

a. cares for children younger than the exemption allows;

b. provides before- or after-school care for more hours than the exemption allows; or

c. provides care outside the designated school year (see [Appendix 2000-2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_2.asp#LPPH_apx2000_2): Determining Whether a Program or Operation is Regulated by Licensing – Questions and Answers, Items B.5 and B.6).

DFPS Rule, 40 TAC [§§745.121](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=121); [745.123](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=123)

### 2350 Governmental Entities That Are Exempt from DFPS Regulation

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2340)

Policy

The following types of programs are exempt from regulation by DFPS because they are regulated by other governmental entities:

• A program located on a federal installation

• State-operated correctional and treatment facilities

See:

[2351](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2351) A Facility on a Federal Installation

[2352](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2352) State-Operated Programs

[2353](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2353) Municipal Programs

#### 2351 A Facility on a Federal Installation

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2341)

A facility operated on a federal installation, including military bases or Indian reservations, is exempt from regulation by Licensing because a state agency has no jurisdiction or authority to regulate such facilities.

DFPS Rules, 40 TAC [§745.115(1)](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=115)

#### 2352 State-Operated Programs

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2342)

Certain state-operated programs are exempt from regulation by Licensing. All other state-operated programs must be certified by Licensing.

See:

2352.1 Correctional Facilities

2352.2 Treatment Facilities

2352.3 Youth Camps Licensed by DSHS

2352.4 Youth Camps Exempt from DSHS Licensing

##### 2352.1 Correctional Facilities

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2342.1)

The following types of correctional facilities are exempt from regulation by Licensing:

a. A juvenile detention facility certified under [§261.405](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.261.htm#261.405) of the Texas Family Code

b. A juvenile correctional facility that provides services solely for the Texas Juvenile Justice Department

c. Any other correctional facility for children that is operated or regulated by another state agency or by a political subdivision of the state

Texas Human Resources Code [§42.041(b)(13)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)

Texas Family Code [§261.405](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.261.htm#261.405)

DFPS Rules, 40 TAC [§745.115(2)(A)(B)(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=115)

##### 2352.2 Treatment Facilities

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2342.2)

The following types of facilities are exempt from regulation by Licensing:

• A treatment facility

• A structured treatment program that serves chemically dependent persons and is licensed by the Texas Department of State Health Services

DFPS Rules, 40 TAC [§745.115(2)(D)](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=115)

##### 2352.3 Youth Camps Licensed by DSHS

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2342.3, 2342.31)

A youth camp licensed by the Texas Department of State Health Services (DSHS) is exempt from regulation by Licensing.

Exception

Operations licensed by DFPS that operate a summer camp must continue to operate under the DFPS license during the summer months. See [Appendix 2000-2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_2.asp#LPPH_apx2000_2): Determining Whether a Program or Operation Is Regulated by Licensing – Questions and Answers, items A. 1-5.

Texas Human Resources Code [§42.041(b)(5)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)

DFPS Rules, 40 TAC [[§745.115(2)(E)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=115)](http://info.sos.state.tx.us/pls/pub/readtac$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=115)

##### 2352.4 Youth Camps Exempt From DSHS Licensing

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2342.32, 2342.33)

A youth camp is exempt from regulation by DFPS if it is a youth camp that is exempt from licensure by the Texas Department of State Health Services (DSHS) under [§141.0021](http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.141.htm#141.0021), Health and Safety Code, because it:

• is operated by or on the campus of an institution of higher education or a private or independent institution of higher education, as those terms are defined in Education Code, [§61.003](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.61.htm#61.003); and

• is regularly inspected by at least one local governmental entity for compliance with health and safety standards.

DFPS Rules, 40 TAC [§745.115(2)(F)](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=115)

#### 2353 Municipal Programs

LPPH ~~November 2010~~ DRAFT 6663-CCL (new)

A youth camp is exempt from regulation by DFPS if it is a youth camp that is exempt from licensure by Texas Department of State Health Services (DSHS) under [§141.0021](http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.141.htm#141.0021), Health and Safety Code, because it is a recreation program for children ages 5 through 13 that is operated by a municipality and meets the following criteria:

a. The standards of care for the program are annually adopted by ordinance after a public hearing.

b. The standards of care must include staffing ratios and qualifications, facility health and safety standards, and monitoring and enforcement provisions.

c. The standards of care are provided to the parents of each program participant.

d. The parents of each program participant are informed that the program is not licensed by the state.

e. The program is not advertised as child care.

Texas Human Resources Code [§42.041(b)(14)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)

DFPS Rules, 40 TAC [§745.115(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=115)

### 2360 Programs of Limited Duration That Are Exempt From DFPS Regulation

LPPH ~~September 2012~~ DRAFT 6663-CCL (previously 2350)

Policy

Certain programs of limited duration are exempt from regulation by Licensing.

See:

[2361](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2361) Program With Parents on the Premises

[2362](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2362) Short-Term Programs

2363 Religious Programs

2364 Foreign Exchange or Sponsorship Program

#### 2361 Program With Parents on the Premises

LPPH ~~September 2012~~ DRAFT 6663-CCL (previously 2351)

Policy

A program with parents on the premises is exempt from regulation by Licensing, if all of the following are true:

a. The program operates in association with a shopping center, business, religious organization, or other elective activity.

b. The program does not advertise as a child care facility or day care center and informs parents that it is not licensed by the state.

c. The parent or person responsible for the child attends or engages in the elective activity. (Part-time employees and contractors who conduct the activity may use the program as long as they meet the limits in (d) below. A caregiver for the program may use the program for the caregiver’s own child as long as the child remains with a caregiver.)

d. The child is only in care:

• for up to four and one-half hours per day and for up to 12 hours a week; or

• for up to 15 hours per week, if care is provided so that a parent may attend an educational class provided by a nonprofit entity in a county of 800,000 or more and the county is adjacent to an international border.

However, there are no time limits for the child of a caregiver at the program as long as the child is with the caregiver.

e. The program’s caregivers are able to contact the parent or person responsible for the child at all times.

See Texas Human Resources Code [§42.041(b)(3)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)

DFPS Rules, 40 TAC [§745.117(1)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=117), [§745.101(3)](http://info.sos.state.tx.us/pls/pub/readtac$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=101)

Examples of Programs That Are Exempt

Examples of programs that are exempt are:

a. Programs that are operated in connection with a religious organization and offer programs for children, such as classes for religious instruction

b. Programs operated so that parents can attend a short-term class that lasts up to three hours for four or fewer days or evenings a week, for a few weeks (such as classes on parenting skills or English as a second language)

c. Programs operated in a gym or health club, so that members can exercise. The caregiver of the program and part-time staff may use the program for their own children

Exceptions

Small Business Offering Child Care

A small business that offers child care services to its employees does not qualify for this exemption. Small businesses that provide care for children whose parents or guardians work in the same building where the child care is offered are subject to regulation as described in Texas Human Resources Code, Subchapter F, [§42.151](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.151). Regulation of Employer-Based Day Care Facilities.

Temporary Shelter

A temporary shelter, such as a family violence or homeless shelter that offers child care services to its residents does not qualify for this exemption. Temporary shelters that provide care for children whose parent or guardian reside in the same building where the child care is offered are subject to regulation as described in Texas Human Resources Code, Subchapter G, [§42.201](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.201) Regulation of Temporary Shelter Day Care Facilities.

#### 2362 Short-Term Program

LPPH ~~September 2012~~ DRAFT 6663-CCL (previously 2352)

Policy

A short-term program is exempt from regulation by Licensing, if:

• the program operates for fewer than three consecutive weeks and fewer than 40 days in 12-month period; and

• the program is not part of an operation subject to Licensing regulation.

DFPS Rules, 40 TAC [§745.117(2)](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=117)

#### 2363 Religious Program

LPPH ~~September 2012~~ DRAFT 6663-CCL (previously 2353)

Policy

A religious program is exempt from regulation by Licensing, if:

• the program offers religious instruction, such as Sunday school or weekly catechism; or

• the program lasts for two weeks or fewer.

Texas Human Resources Code [§42.041(b)(4)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)

DFPS Rules, 40 TAC [§745.117(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=117)

**Example:** Vacation Bible school

#### 2364 Foreign Exchange or Sponsorship Program

LPPH ~~September 2012~~ DRAFT 6663-CCL (previously 2354)

Policy

A foreign exchange or sponsorship program is exempt from regulation by Licensing, if:

a. an unrelated child or sibling group lives in the provider’s home;

b. each child is in the United States on a time-limited visa; and

c. each child is being sponsored by an organization or by the provider with whom they are living.

Texas Human Resources Code [[§42.041(b)(22)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)

DFPS Rules, 40 TAC [§745.117(4)](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=117)

### 2370 Educational Programs That Are Exempt From Regulation by DFPS

LPPH ~~ADD DATE~~ DRAFT (previously 2360)

#### 2371 Standard Educational Programs

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2361)

Certain accredited educational programs are exempt from regulation by Licensing, as identified in the table below.

Applying for or being in the process of accreditation does not constitute accreditation.

| Educational Program or Operation | Conditions for Exemption |
| --- | --- |
| An accredited educational program or operation for grades prekindergarten and above is exempt from regulation by Licensing, if: | the educational program or operation:  • operates primarily for educational purposes;  • runs the educational program;  • serves children ages 3 to 5 (up to the child’s fifth birthday); and  • is accredited by the Texas Education Agency (TEA), the Southern Association of Colleges and Schools (SACS), or the Texas Private School Accreditation Commission (TEPSAC).  For educational facilities that also provide residential child care, see DFPS Rules [§745.125](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=125) which addresses whether additional exemption criteria are required for such facilities.  For a list of accrediting organizations approved by TEPSAC see [Appendix 2000-1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000.asp#LPPH_apx2000_1): Organizations Whose Members May Qualify for Exemption.  For information concerning charter schools, see [Appendix 2000-2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_2.asp#LPPH_apx2000_2): Determining Whether a Program or Operation Is Regulated by Licensing – Questions and Answers, [Item B](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_2.asp#Apx_2000_2_B).  For information on collaborative programs, such as an independent school district (ISD) that operates a Head Start program or a program that combines Head Start and prekindergarten, see [Appendix 2000-2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_2.asp#LPPH_apx2000_2), [Item C](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_2.asp#Apx_2000_2_C).  Exception:  A child-care program operated by the school district for its employees (bus drivers, teachers, custodians, kitchen workers, and so on) is subject to licensure. |
| A before- or after-school child day care program that is operated by an accredited educational facility (grades prekindergarten and above) is exempt from regulation by Licensing, if the program: | • is specifically accredited by TEA, SACS, or TEPSAC;  • operates the child day care program; and  • serves children ages 3 to 5 (up to the child’s fifth birthday). |
| A before- or after-school child day care program that is operated by a contracted entity and is located in an accredited educational operation for grades prekindergarten and above is exempt from regulation by Licensing if it: | • is accredited by TEA, SACS, or TEPSAC;  • contracts with an entity to operate the before- or after-school child day care;  • serves children ages 3 to 5 (up to the child’s fifth birthday); and  • offers a curriculum for before- or after-care that has been approved by TEA, SACS, or TEPSAC.  Exception: An after-school program is not exempt from regulation by Licensing if it is operated by a contractor for a charter school. See [Appendix 2000-2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_2.asp#LPPH_apx2000_2): Determining Whether a Program or Operation Is Regulated by Licensing – Questions and Answers, Item B.3.  Rationale: TEA does not approve the curricula for after-school programs offered at charter schools. |
| An educational program or operation that is a member of an organization that requires compliance with standards is exempt from regulation by Licensing, if it: | • serves children in prekindergarten through at least grade two;  • serves children ages 3 to 5 (up to the child’s fifth birthday);  • provides child day care no more than one hour before and one hour after the hours that are customary for schools in that community; and  • is a member of an organization that either:  • publishes health, safety, fire, and sanitation standards equal to those required by the state, county, or municipality, or  • follows the state, county, or municipal health, safety, and fire codes.  Also see 2322.11 Actions Taken by the Accrediting Organization When an Educational Program Is Exempt. |
| A private educational program or operation is exempt from regulation by Licensing, if it: | • serves children who are at least age 3 on September 1;  • offers no more than two hours of child day care, total, before or after the hours that are customary for schools in that community; and  • operates at least:  • a preschool,  • a prekindergarten class through grade three,  • grades 9 through 12, or  • the same pattern of grade clustering as found in the public elementary schools (grades one through six) in the local school district.  See:  Texas Human Resources Code [§42.041(b)(7)(8)(9)(11)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)  DFPS Rule, 40 TAC [§745.119](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=119) |

DFPS Rule, 40 TAC [§745.125](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=125)

#### 2372 Additional Exemption Criteria for Educational Programs That Provide Residential Child Care

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2372.1)

An educational program that provides residential child care must meet all of the following additional criteria in order to be exempt from licensing:

• Parents retain primary responsibility for their child’s financial support, health problems, or serious personal problems.

• Residential child care is provided solely to facilitate the students’ participation in the educational program and must not exist apart from the educational aspect of the program.

Also see [2371](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2371) Standard Educational Programs.

DFPS Rule, 40 TAC [§745.125](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=125)

### 2380 Miscellaneous Programs Exempt From DFPS Regulation

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2370)

Policy

The following miscellaneous programs are exempt from regulation by Licensing.

| Miscellaneous Programs | Conditions for Exemption |
| --- | --- |
| A neighborhood recreation program | A neighborhood recreation program is exempt from regulation by Licensing, if all of the following are true:  • The program provides activities designed for the recreation of children ages 5 through 13.  • The governing body of the program adopts standards for care. At a minimum, the standards must include staffing ratios, staff training, health and safety standards, and mechanisms for assessing and enforcing the program’s compliance with the standards for care.  • The program does not collect compensation for its services. Compensation is anything of value received from the parent in exchange for the care of the child. The program can accept only a nominal annual fee for membership.  • The program is organized as a nonprofit organization, or is located at the participant’s residence.  • The program informs each parent that it is not regulated by Licensing. The program must also establish a policy explaining how it informs parents that Licensing does not regulate the program. The policy may either be provided in writing or verbally. The program is not advertised or represented as a regulated operation.  • The program provides a process to receive and resolve complaints from parents.  • The program conducts criminal background checks on all employees and volunteers who work with the children. Background checks must include information from the Texas Department of Public Safety.  **Rationale:**  Neighborhood recreation programs that serve children who are 5 through 13 years old are not considered day care or after-school care. Day care and after-school care offer a specific type of service that parents depend on for child care.  Neighborhood recreation programs that do not meet all requirements to be exempt from regulation may meet the definition for *school-age program*. School-age programs are subject to Licensing regulation under [Chapter 744](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=744).  See:  Texas Human Resources Code [§42.002(21)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002)  DFPS Rules, 40 TAC [§745.129(1)](http://info.sos.state.tx.us/pls/pub/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=129) |
| A single-skill program | A program that teaches a single skill, talent, ability, expertise, or proficiency is exempt from regulation by Licensing, if the program:  • offers direct instruction for one talent, ability, expertise, or proficiency;  • does not provide other services that are not directly related to the single skill, talent, ability, expertise, or proficiency;  • informs each parent that it is not regulated by Licensing; and  • does not advertise or represent as a regulated operation.  See DFPS Rules, 40 TAC [§745.129(2)](http://info.sos.state.tx.us/pls/pub/readtac$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=129).  **Rationale:** The program is operated or intended to be operated as a child-care program, school-age program, or a before-school or after-school program.  Single-skill programs that do not meet all requirements to be exempt from regulation may meet the definition for *school-age program*. School-age programs are subject to Licensing regulation under [Chapter 744](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=744).  See:  Texas Human Resources Code [§42.002(21)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002) |
| A caregiver providing residential care | A caregiver is exempt from regulation by Licensing, if all of the following are true:  • The caregiver is caring for only one child or sibling group and is not related to the child or sibling group.  • The caregiver knows the child or sibling group, or the family of the child or sibling group, before providing care.  • The caregiver does not receive compensation or solicit donations for the care of the child or sibling group. Compensation is anything of value, beyond the child’s normal expenses, received by the caregiver from the parent in exchange for care of the child. Compensation does not include Medicaid, insurance, or other governmental benefits or assistance.  • The caregiver has a written agreement with the parent to care for the child or siblings.  See DFPS Rules, 40 TAC [§745.129(3)](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=129). |
| Emergency Shelter for Minors | An emergency shelter is exempt from regulation by Licensing, if all of the following are true:  • the shelter does not otherwise operate as a child care facility that must have a license from DFPS;  • the shelter provides shelter or care to the minor and the minor’s child or children, if any;  • the shelter provides care for the minor or the minor's child or children only when there is an immediate danger to the physical health or safety of the minor or the minor's child or children;  • the shelter does not provide care for more than 15 days, unless:  (1) the minor consents to shelter or care to be provided to the minor or the minor’s children and is:  (i) 16 years of age or older, resides separate and apart from the minor’s parent, and manages the minor’s own financial affairs; or  (ii) unmarried and is pregnant or is the parent of a child; or  (2) the minor has qualified for Temporary Assistance for Needy Families under [Chapter 31](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.31.htm), Texas Human Resources Code, and is on the waiting list for housing assistance; and  • the shelter is:  (1) currently under contract with a state or federal agency for the provision of shelter or care to children; or  (2) a family violence center that meets the requirements listed under Texas Human Resources Code [§51.005(b)(3)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.51.htm#51.005), as determined by the Health and Human Services Commission.  See DFPS Rules, 40 TAC [§745.129(4)](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=129). |
| A caregiver with whom DFPS has placed a child | The caregiver is exempt from regulation by Licensing, if all of the following are true:  • The caregiver has a longstanding and significant relationship with the child.  • DFPS is the managing conservator of the child.  See:  DFPS Rules, 40 TAC [§745.129(5)](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=129)  Texas Family Code, Chapter 264 Relative and Other Designated Caregiver Placement Program, Subchapter I |
| A food distribution program | A food distribution program is exempt from regulation by Licensing, if all of the following are true:  • The program serves an evening meal to children who are 2 years old or older.  • The program is operated by a nonprofit food bank in a nonprofit, religious, or educational facility for not more than two hours a day on regular business days.  See:  DFPS Rules, 40 [TAC §745.129(6)](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=129)  Texas Human Resources Code [§42.041(b)(16)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041). |
| Emergency Shelter for Human Trafficking | An emergency shelter is exempt from regulation by Licensing, if the shelter:  • Does not otherwise operate as a child-care facility that is required to have a license from DFPS;  • Is operated by a nonprofit organization;  • Provides shelter and care for no more than 15 days to alleged victims of human trafficking as defined in Penal Code [§20A.02](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.20A.htm), who are 13-17 years old; and  • Is located in a municipality with a population of at least 600,000 that is in a county on an international border; and:  (1) Is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or  (2) Is a family violence center that meets the requirements listed under Texas Human Resources Code [§51.005(b)(3)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.51.htm), as determined by the Health and Human Services Commission.  See DFPS Rules, 40 TAC [§745.129(7)](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=129). |

### 2390 Other Operations Exempt from DFPS Regulation

LPPH ~~ADD DATE~~ DRAFT 6663-CCL (previously 2371)

#### 2391 A Foster Home or Foster Group Home Regulated by a CPA

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2371.1)

A foster home or foster group home that is regulated by a child-placing agency (CPA) is exempt by law from regulation by Licensing.

The CPA verifies and monitors the home’s compliance with standards. See [2200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2200) Types of Child Care Permits and Multiple Operations and its subitems.

Texas Human Resources Code, [§42.041(b)(2)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)

#### 2392 Certain State-Operated Facilities

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2371.2)

A state-operated facility is exempt by law from regulation by Licensing.

See:

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

[2280](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2280) State-Operated Facilities Exempt From Licensure

[2350](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2350) Governmental Entities That Are Exempt from DFPS Regulation

Texas Human Resources Code, [§42.041(b)(1)(6)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041)

#### 2393 Certain Annual Youth Camps

LPPH ~~November 2010~~ DRAFT 6663-CCL (previously 2371.4)

An annual youth camp is exempt by law from regulation by Licensing, if the youth camp:

a. is held in a municipality with a population of more than 1.5 million;

b. operates for not more than three months; and

c. has been operated for at least 10 years by a nonprofit organization that provides care for the homeless.

Texas Human Resources Code, [§42.041(b)(15)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm" \l "42.041)

## Appendix 2000-2: Determining Whether a Program or Operation Is Regulated by Licensing – Questions and Answers

LPPH ~~November 2010~~ DRAFT 6663-CCL

Licensing staff may use the following questions and answers as a guide to determining whether a program or operation is regulated by Licensing.

A. Youth Camps

1. What are the general characteristics of a youth camp licensed by the Department of State Health Services (DSHS)?

DSHS defines a youth camp as a program that:

a. provides supervision, instruction, and recreation, using a variety of activities primarily in an outdoor, natural environment, for children who are apart from their parents or legal guardians;

b. operates during school vacation periods (summer break, spring break, and the holiday season), for not more than 120 days per calendar year; and

c. accepts a child for a minimum of four consecutive days for more than four hours per day.

2. Does DSHS license martial arts programs as youth camps?

DSHS issues a license for a martial arts program to serve as a youth camp only if the program meets all of the characteristics of a youth camp, as defined in A.1, directly above.

Most martial arts programs meet the requirements listed in TAC [§745.129(2)](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=129), Single Skill Programs, and are, therefore, exempt from Licensing regulation by law.

For the requirements to be considered a program that offers direct instruction in a single skill or proficiency, see the Human Resources Code, Chapter 42, [§42.041(b)(18)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041).

3. Can Licensing recommend that a recreational program apply for a license from DSHS to operate as a youth camp, rather than apply for a license from DFPS Licensing?

Yes, in some cases; however, Licensing staff must first determine whether the program is exempt from regulation or must be licensed as a school-age program.

To determine whether a program is exempt, Licensing staff:

*•* review the relevant definitions; and

• compare the information on the program’s exemption determination (Form 2821) with the characteristics and definition of a youth camp.

Recreation programs for children ages 5-13 are commonly known as neighborhood recreation programs. The requirements for exemption as a neighborhood recreation program are listed in [§745.129(1)](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=129), under Exempt Miscellaneous Programs.

Programs that do not meet all of the requirements to be exempt as a neighborhood recreation programs may meet the requirements to be exempt as a school-age program. A school-age program is a child-care facility that provides supervision, recreation, and skills instruction or training, before or after the customary school day, for at least two hours a day, three days a week, to children attending prekindergarten through grade six. A school-age program may also provide transportation and may operate during school holidays, the summer period, or any other time when school is not in session.

If, after determining that a program is not exempt, Licensing staff believe that the program would more appropriately be licensed by DSHS, Licensing staff:

• may recommend that the operation apply for a license from DSHS; and

• request that the program send confirmation that its application was sent to DSHS within 14 calendar days of contacting Licensing.

If Licensing staff believes that Licensing must regulate the program, and no confirmation about a DSHS license has been received, or the program cannot be determined to have the characteristics of a youth camp, Licensing staff proceed with the application process for a permit from Licensing.

Licensing staff do not officially determine that a program is exempt from DFPS regulation, unless:

• the program is already licensed by DSHS; or

• the program can show proof of application for a DSHS youth camp license within 14 calendar days from the date that the Licensing representative contacted the program.

An operation cannot make its own determination about being regulated or exempt from regulation.

4. Can a program that holds a current license from DFPS Licensing request a youth camp license from DSHS?

No. DSHS does not issue a license to an operation that holds a current license from DFPS Licensing.

5. Since Licensing may issue a license to some but not all of an operation’s programs (such as issuing a license for after-school care only), can DSHS issue a youth camp license to some but not all of an operation’s programs?

No. If DSHS issues a youth camp license to the operation, then all of the programs at the operation are exempt from regulation by Licensing. Under Human Resources Code [§42.041(a)(5)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.041), a youth camp licensed by DSHS is exempt from regulation by Licensing. So if DSHS issues a license to an operation for a youth camp, even though the operation includes programs that constitute child care and have no characteristics of a youth camp, Licensing cannot regulate any of the operation’s programs.

B. Educational Exemptions for Charter Schools

1. Are charter schools exempt from licensure by Licensing?

Yes, charter schools are exempt from licensure by Licensing.

2. Is an after-school program that is operated by a charter school exempt from regulation by Licensing?

Yes, an after-school program that is operated by a charter school is exempt from regulation by Licensing. The Texas Education Agency (TEA) has authority to grant a charter for operation to a school or may authorize a school district to grant the charter.

3. Is an after-school program that is operated by the contractor of a charter school exempt from regulation by Licensing?

No, an after-school program is not exempt from Licensing regulation if it is operated by a contractor for a charter school. The TEA does not approve the curriculum for such after-school programs.

4. Is a charter school exempt from regulation by Licensing if it offers more than one program at the same location (for example, offering first grade along with after-school care)?

Just as with school districts, child-care programs that are operated by a school district or charter school for children younger than three years are subject to regulation by DFPS. If the various programs offered operate separately from each other, Licensing exempts only those that qualify for an exemption. If the programs do not operate separately from each other, Licensing regulates all of them.

To demonstrate that its programs are separate, a school must meet the criteria for defining whether programs are separate, as described in [2340](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2340) Exempt Programs That Operate in the Same Locations as Regulated Operations.

5. May an after-school program exempt from regulation by Licensing offer care on school holidays and staff in-service days?

Yes, an after-school program may offer part or full day care on school day holidays and staff in-service days as long as the program is operated by a school district or charter school and the dates are within the designated school year.

6. How do Licensing staff determine the designated school year?

Each school/school district publishes a calendar that outlines school days, school holidays, and staff in-service days. School holidays and staff in-service days are considered to be within the designated school year as long as these days are specified in writing on the school calendar.

C. Collaborative Programs – Head Start and Prekindergarten

Licensing staff use the following guidelines when determining whether to license a Head Start program:

1. Is an operation that combines subsidized programs, such as Head Start and prekindergarten, exempt from regulation by Licensing?

An independent school district is exempt from regulation by Licensing, if it:

a. operates either a Head Start program or combined program that offers Head Start and prekindergarten; and

b. meets all of the exemption criteria in 40 TAC [§745.119(1)](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=119).

The program is **not** exempt from regulation if it also receives public funding that requires an operation to be licensed by Licensing in order to receive the public funding; for example, an operation that receives public funding for child care management services (CCMS).

To determine who operates a program, Licensing staff ask who is responsible for hiring, supervising, and firing staff?

Head Start programs and early care and education operations that do not meet the exemption criteria in [§745.119(1)](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=119) must be licensed and regulated by Licensing.

D. Miscellaneous Questions and Answers

1. If a facility is sold to a buyer who plans to open an educational program (for example, a Montessori school for children who are 4 to 5 years old), and the buyer is not subject to licensing, must the buyer still complete an exemption form?

Yes. An operation cannot make its own determination about being regulated or exempt from regulation. Having information about the new program on the exemption form provides Licensing staff with useful information about the new facility and helps Licensing staff determine whether or not it is exempt from regulation by Licensing.

2. How does an operation that offers a skills class in connection with another program (such as a day care, nursery school, or preschool) demonstrate that the skills class is separate from the other programs and, therefore, exempt from regulation by Licensing?

To demonstrate that its programs are separate, an operation must meet the criteria for defining whether programs are separate, as described in [2330](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2330) Exempt Facilities That Operate in the Same Locations as Regulated Facilities.

3. Are court-ordered children’s exchanges (domestic relations offices) exempt?

The visitation services provided by a domestic relations office or its contractor do not fit the Licensing definition of child day care, so Licensing neither regulates them nor exempts them from regulation. Provisions for domestic relations offices and their contractors are covered in the Texas Family Code, [§203.004(a)(11)](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.203.htm#203.004).

4. Are the healthy snack programs, administered by the Food and Nutrition Program of the U.S. Department of Agriculture, exempt?

Most healthy snack food programs do not fit the Licensing definition of child day care, so Licensing neither regulates them nor exempts them from regulation.

Among the centers that do fit the definition, those that operate for fewer than two hours a day are not required to obtain an exemption or complete an exemption determination form.

Centers that operate for two hours or more a day are required by the federal food and nutrition program to:

• obtain a DFPS license or proof of exemption; or

• modify their hours to operate for fewer than two hours a day.

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

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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.asp#LPPH_2200) Types of Child Care Permits and Multiple Operations

[2300](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2300) Determining Whether a Program Is Subject To or 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://www.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2948.doc) Plan of Operation for Licensed Center 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](http://www.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2985.doc) 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 at [Search Texas Child Care](http://www.dfps.state.tx.us/Child_Care/Search_Texas_Child_Care/default.asp)

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](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3000.asp#LPPH_3242) How to Evaluate an Application for a Permit).

2. [Form 2911](http://intranet/application/Forms/showFile.aspx?NAME=2911.pdf) Governing Body/Director Designation (child day care) or [Form 2819](http://www.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://www.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2982.doc) Personal History Statement

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

5. Appropriate Child Care Fee Schedule

6. [Form 2948](http://www.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2948.doc) Plan of Operation for Licensed Center 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://www.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2760.doc) Controlling Person

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

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

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

12. The operation’s floor plan

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

14. The notification posters 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://www.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.43.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

## Appendix 2000-4: Decision Guide: Is the Care Being Provided Subject to Regulation?

LPPH ~~September 2012~~ DRAFT 6663-CCL

To determine whether child care is subject to regulation, Licensing staff review each of the following sections:

[Child Day Care Provided at a Caregiver’s Home](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_4.asp#caregiver)

[Child Day Care Provided at a Location Other Than the Caregiver’s Home](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_4.asp#other)

[Determining Whether the Care Provided Is Subject to Regulation as a Residential Child-Care Facility](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_4.asp#residential)

Child Day Care Provided at a Caregiver’s Home

To determine whether child day care that is provided at the caregiver’s home is subject to regulation, Licensing staff consider the following:

1. Is care provided in the caregiver’s own home?:

• If **yes,** see step 2.

• If **no**, see [Child Day Care Provided at a Location Other Than the Caregiver’s Home](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_2000_4.asp#other)

2. Is compensation provided for the care, and is regular care provided for three or fewer children who are unrelated to the caregiver and whose ages range from birth through 13 years? See HRC [42.052(c):](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.052)

• If **yes**, the operation is subject to regulation as a listed home. The total number of children in a listed family home, **including** those related to the caregiver, may not exceed 12 at any given time.

• If **no**, see step 3.

3. Are all of the children related to the caregiver? "Children related to the caregiver" means children who are the caregiver’s children, stepchildren, grandchildren, great-grandchildren, brothers, sisters, stepbrothers, stepsisters, nieces, or nephews; a relationship between the child and caregiver that was created by court decree (such as adoption); or any combination of the above. See HRC [42.002(16)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002):

• If **yes,** the operation is not subject to regulation and there is no need for further evaluation.

• If **no**, see step 4.

4. Are the children in care regularly, meaning is the caregiver providing care at least four hours a day, three or more days a week, and for more than nine consecutive weeks? See HRC [42.002(17):](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002)

• If **yes,** see step 5.

• If **no**, the operation is not subject to regulation and there is no need for further evaluation.

5. Is regular care provided for four or more children who are unrelated to the caregiver and whose ages range from birth through 13 years? The children do not have to be present at the same time. See HRC [42.002(9)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002) and [42.052(d)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.052):

• If **yes**, the operation is subject to registration or may be licensed as a child-care home. Go to step 6.

• If the answer to both this question and the question in step 2 is **no,** then the operation is not subject to regulation.

6. If the answer to step 5 is **yes**, Licensing staff take one of the following steps, based on the type of permit required:

a. Determine compliance with the minimum standards outlining the maximum number of children by age for registered child care homes (see [Minimum Standards for Child-Care Homes](http://www.dfps.state.tx.us/documents/Child_Care/Child_Care_Standards_and_Regulations/747_Homes.pdf)). If the total number in care at any one time exceeds the maximum allowed based on the ages, the number must be reduced.

b. Determine compliance with the minimum standards outlining the maximum number of children by age for licensed child-care homes (see [Minimum Standards for Child-Care Homes](http://www.dfps.state.tx.us/documents/Child_Care/Child_Care_Standards_and_Regulations/747_Homes.pdf)). If the total number in care at any one time exceeds the child/caregiver ratios, the number must be reduced.

See:

Texas Human Resources Codes[, §42.002(9)(16)(17)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002) and [42.052(c)(d)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.052)

Texas Administrative Code, Chapter 745, subchapters [B](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=19&ch=745&sch=B&rl=Y) and [C](http://info.sos.state.tx.us/pls/pub/readtac%24ext.ViewTAC?tac_view=5&ti=40&pt=19&ch=745&sch=C)

Licensing Policy and Procedure Handbook, Section [2000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2000) Handling Inquiries About the Licensing Process and Exemptions

Child Day Care Provided at a Location Other Than the Caregiver’s Home

To determine whether child day care, or a plan for child day care, is subject to regulation, Licensing staff consider the following:

1. Is the care provided outside of the caregiver’s home?

• If **yes**, see step 2.

• If **no**, see the Decision Guide for Determining If Subject to Regulation When Child Day Care Is Provided In The Caregivers Own Home.

2. Are the children in care for more than two days a week?

• If **no**, the operation is not subject to regulation and there is no need for further evaluation.

• If **yes**, see step 3.

3. Is the care provided, or expected to be provided, for more than eleven weeks?

• If **no**, the operation is not subject to regulation and there is no need for further evaluation. **Exception:** If a child in care is under five-years old, the operation may be subject to regulation, see step 4.

• If **yes**, see step 4.

4. Are all of the children related to the caregiver? "Children related to the caregiver" means children who are the caregiver’s children, stepchildren, grandchildren, great-grandchildren, brothers, sisters, stepbrothers, stepsisters, nieces, or nephews; a relationship between the child and caregiver that was created by court decree (such as adoption); or any combination of the above. See HRC [42.002(16)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002).

• If **yes**, the operation is not subject to regulation and there is no need for further evaluation.

• If **no**, the operation is subject to **licensure**. Also, consider the operation for possible **exemption.**

Determining Whether Care Provided Is Subject to Regulation as a Residential Child-Care Facility

To determine whether the child care provided is subject to regulation as a residential child-care facility (including a child-placing agency), Licensing staff ask the following question:

Are all of the children related to the caregiver? "Children related to the caregiver" means children who are the caregiver’s children, stepchildren, grandchildren, great-grandchildren, brothers, sisters, stepbrothers, stepsisters, nieces, or nephews; a relationship between the child and caregiver that was created by court decree (such as adoption); or any combination of the above. See HRC [42.002(16)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002)

• If **yes**, the operation is not subject to regulation and there is no need for further evaluation.

• If **no**, Licensing staff evaluate further to determine whether the operation is subject to regulation or exempt from regulation.

Evaluating Child-Placing Services

A program that brings birth mothers and prospective adoptive parents together but does not arrange the adoption is not considered to be making plans for a placement and is not subject to regulation as long as the program:

• does not receive compensation for its services; and

• does not conduct child-placement activities.

Child-placing agencies located in Texas that provide only international adoption services are subject to Licensing’s regulation when placing a child with a Texas family.

Licensure by Another State Agency

Licensure by another state agency to provide medical care does not exempt a facility from the need to be licensed as a child-placing agency, if child-placing activities are being conducted.

Evaluating Boarding Schools

An accredited educational program or operation for grades pre-kindergarten and above is exempt from regulation by Licensing, if all of the following are true:

a. The educational operation operates **primarily for educational purposes**.

b. The educational operation operates the program.

c. All children in the program are at least pre-kindergarten age (three or four years).

d. The educational operation or program is accredited by the Texas Education Agency (TEA), the Southern Association of Colleges and Schools (SACS), or the Texas Private School Accreditation Commission (TEPSAC). Being in the process of applying for accreditation or having applied for accreditation does not constitute accreditation.

For information on an individual school’s accreditation status, visit [AskTED](http://mansfield.tea.state.tx.us/tea.askted.web/Forms/Home.aspx) for the Texas Education Directory (TED), or [TEPSAC](http://www.tepsac.com/) for access to the TEPSAC directory.

e. The parents retain primary responsibility for financial support, health problems, or serious personal problems of the students.

f. The residential child care is provided solely for the purpose of facilitating a student’s participation in the educational program and does not exist apart from the educational aspect of the facility.

Exemptions for All Other Residential Operations

The following are exempted from regulation as a residential child-care facility:

1. A facility operated on a federal installation, including military bases and Indian reservations, is exempt.

2. The following state-operated programs:

a. A juvenile detention facility certified under [§261.405](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.261.htm#261.405), Texas Family Code, or a juvenile facility providing services solely for the Texas Juvenile Justice Department or any other correctional facility for children that is operated or regulated by another state agency or by a political subdivision of the state.

b. A treatment facility or a structured program for treating chemically dependent persons that is licensed by the Texas Department of State Health Services.

c. A youth camp licensed by the Texas Department of State Health Services.

d. A youth camp exempt from licensure by the Texas Department of State Health Services under [§141.0021](http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.141.htm#141.0021), Health and Safety Code, because it is:

1. operated by or located on the campus of an institution of higher education, as defined in [§61.003(8)](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.61.htm#61.003), Education Code, or a private or independent institution of higher education, as defined in [§[§61.003(15)](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.61.htm#61.003)](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.61.htm#61.003), Education Code; and

2. regularly inspected by at least one local governmental entity for compliance with health and safety standards.

3. Programs of limited duration

a. A short-term program, if the program:

1. operates no more than 11 weeks during the year;

2. provides care only for children who are at least five years old and younger than 14 years old; and

3. is not a part of an operation subject to regulation by DFPS Licensing.

b. A religious program, if it is:

1. an ongoing program of religious instruction, such as Sunday school or weekly catechism; or

2. a religious program that lasts two weeks or less.

c. A respite care program, if:

1. the program provides residential child care on weekends or for a short time;

2. the care is planned;

3. the program does not provide care for more than 40 days per year; and

4. the program is not a part of an operation subject to regulation by Licensing.

d. A foreign exchange or sponsorship program, if the children in the program:

1. entered the United States on a time-limited visa;

2. are living in the home of a person they are not related to; and

3. are under the sponsorship of the person with whom they are living or are under the sponsorship of some organization.

e. An arrangement between friends, if:

1. the caregiver is friends with the parents of the child;

2. the purpose of the arrangement is to provide temporary residential child care for one child or a sibling group; and

3. the care does not exceed 40 continuous days or 150 total days in a calendar year.

4. Miscellaneous programs

a. A caregiver providing residential care, if all of the following are true:

1. There is only one unrelated child or sibling group

2. The caregiver had previously known the children or family of the children

3. The caregiver does not receive compensation or solicit donations for the care of the child or sibling group.

Compensation is anything of value, beyond the child’s normal expenses, that is received by the caregiver from the parent in exchange for care of the child. Compensation does not include reimbursement for the normal expenses associated with caring for a child, including Medicaid payments, insurance benefits, or other governmental benefits or assistance.

4. The caregiver has a written agreement with the parent to care for the child or siblings.

b. An emergency shelter for minors, as defined by [§101.003](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.101.htm#101.003), Texas Family Code, must meet the following if:

1. the purpose of the shelter is to provide shelter or care to a minor and the minor’s child or children if any.

2. the shelter provides care for the minor and the minor’s child or children only when there is an immediate danger to the physical health or safety of the minor’s child or children;

3. the shelter does not provide care for more than 15 days, unless the minor consents to shelter or care to be provided to the minor or the minor’s children and is:

a. 16 years of age or older, resides separate and apart from the minor’s parent, and manages the minor’s own financial affairs; or

b. Unmarried and is pregnant or is the parent of a child; or

c. has qualified for Temporary Assistance for Needy Families (TANF) and is on the waiting list for housing assistance; and

d. Licensing staff have received written confirmation on the items b.1-4, above.

c. A caregiver caring for a child placed by DFPS when all of the following are true:

1. the caregiver has a longstanding and significant relationship with the child;

2. DFPS is the managing conservator of the child; and

3. DFPS placed the child in the caregiver’s home.

d. Emergency Shelter Care for Human Trafficking Victims must meet the following:

(1) Does not otherwise operate as a child-care facility that is required to have a license from DFPS;

(2) Is operated by a nonprofit organization;

(3) Provides shelter and care for no more than 15 days to alleged victims of human trafficking as defined in Penal Code [§20A.02](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.20A.htm#20A.02), who are 13-17 years old; and

(4) Is located in a municipality with a population of at least 600,000 that is in a county on an international border, and:

(a) Is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or

(b) Is a family violence center that meets the requirements listed under Human Resources Code [§51.005(b)(3)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.51.htm#51.005), as determined by the Health and Human Services Commission.