**Licensing Policy and Procedures**

**Handbook Revision \_\_**

This revision of the Licensing Policy and Procedures Handbook was published on \_\_\_\_. Summaries of new or revised items are provided below.

For Licensing revisions only: Immediately following signoff, Licensing staff will prepare a highlighted document showing significant changes that we will post with the revision memo.

Appendix 2000-4 Decision Guide (PATS 7622)

The items below are revised to update a section in the Decision Guide related to Child Day Care Provided at a Caregiver's Home.

Display of Revisions with Changes Highlighted (Word Document)

See:

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

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

LPPH ~~March 2014~~ DRAFT 7622-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

Regular care is care that is provided for at least four hours a day, three or more days a week, for three or more consecutive weeks or for four hours a day for 40 or more days in a period of 12 months.

“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" \l "42.002).

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

1. Does the caregiver provide *regular* care in the caregiver’s own home for children whose ages range from birth through 13 years?

• If **yes**, see step 2.

• If **no**, the care is not subject to regulation.

2. Are all of the children *related* to the caregiver?

• If **yes**, the care is not subject to regulation. (Some providers who care for related children may list with DFPS and therefore be subject to Licensing's regulation as provided by HRC [§42.0523](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm" \l "42.0523), but these providers would not be illegal operations if they did not volunteer to be regulated.)

• If **no**, see step 3.

3. Does the caregiver provide care for four or more unrelated children?

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

• If **no**, because there are *three or fewer children in care*, see step 4.

4. Does the caregiver receive compensation for providing care to the children?

• If **yes**, the care is subject to regulation as a *listed home*.

• If **no**, the care is not subject to regulation.

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 Child Day Care Is Provided at a Caregiver's Home, above.

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 three or more consecutive weeks?

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

• 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. Such programs are 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), 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:

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 listed in this section.

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.

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

d. Emergency shelter care for human trafficking victims:

1. may 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.