#### 3313 Inspecting the Operation (Except Listed Homes)

LPPH ~~September 2015~~ DRAFT 8737-CCL

Policy

After accepting the application for a license, certificate, compliance certificate, or registration, the inspector must conduct an inspection to determine whether the operation is in compliance with all applicable rules and minimum standards.

Procedure

The inspector:

• cites any statutes, administrative rules, and minimum standards the operation has not complied with and establishes dates by which the operation must be in compliance;

• follows up by inspection, mail, fax, or email to ensure that corrections of deficiencies have been made; and

• ensures any investigation alleging violations of statutes, administrative rules, or minimum standards is complete.

If the operation is providing care without a permit at the time of the inspection, the inspector cites a violation of the law. The inspector completes the procedures in [4159](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4159) Handling Resistance or Refusal to Allow Inspection if the caregiver refuses to:

• admit staff or attempts to delay or obstruct inspection of the operation during hours that care is provided; or

• allow inspection of an area of the operation that affects or could affect the children’s health, safety, or well-being.

Texas Human Resources Code §[42.044](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.044)

DFPS Rules, 40 TAC §[745.321](http://texreg.sos.state.tx.us/public/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=321)

##### 3313.6 Confirming Fire and Health Inspections (Except for Listed Homes)

LPPH ~~September 2015~~ DRAFT 8737-CCL

Procedure

The inspector ensures that child care centers, school-age programs, before- and after-school programs, general residential operations, and independent foster homes have approved fire and health inspections.

If a temporary shelter child care facility, small employer-based child care facility, registered child care home, or licensed child care home receives a fire or health inspection in the political subdivision where the operation is located and the applicant makes the report available to Licensing staff, Licensing staff:

• reviews the documentation for any restrictions noted by the political subdivision; and

• adds a condition to the permit to encompass any restrictions noted by the political subdivision.

Texas Human Resources Code §§[42.0443](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.0443); [42.153](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.153); [42.203](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.203)

DFPS Rules, 40 TAC §§[744.2501](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=744&rl=2501); [744.3501](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=744&rl=3501); [746.3401](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=746&rl=3401); [746.5101](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=746&rl=5101); [747.3201](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=747&rl=3201); [747.4901](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=747&rl=4901); [748.3001](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=748&rl=3001); [748.3101](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=748&rl=3101); [750.1101](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=750&rl=1101)

### 4120 Types of Inspections

LPPH ~~December 2011~~ DRAFT 8737-CCL

Policy

Licensing staff select the most appropriate inspection type to record an inspection in the CLASS system. Except for inspections of child-placing agencies, all inspections at all operations must include a walk-through for obvious minimum standard deficiencies (deficiencies that are in plain view).

See:

[4121](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4121) Application Inspections

[4122](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4122) Attempted Inspections

[4123](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4123) Follow-Up Inspections

[4124](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4124) Initial Inspections

[4125](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4125) Investigation Inspections

[4126](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4126) Monitoring Inspections

4127 Monitoring and Investigation Inspections

4128 Other Types of Inspections

[4150](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4150) Conducting Inspections

#### 4124 Initial Inspections

LPPH ~~September 2011~~ DRAFT 8737-CCL

Procedure

Initial inspections are inspections that are conducted during the initial period for a licensing permit.

See [3511](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.asp#LPPH_3511) Conducting Inspections During the Initial License Period.

#### 4125 Investigation Inspections

LPPH ~~August 2012~~ DRAFT 8737-CCL

Procedure

Investigation inspections include the investigation of reports alleging:

• abuse;

• neglect;

• violations of Licensing statutes;

• violations of administrative rules;

• violations of minimum standards; or

• a combination of these.

If an investigation interview is conducted at an operation other than the one named in the report, the inspection is classified as *Other* in CLASS. See [6000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6000) Investigations.

#### 4126 Monitoring Inspections

LPPH ~~September 2011~~ DRAFT 8737-CCL

Procedure

Monitoring inspections must include evaluation of at least one entire subchapter of the applicable minimum standards and may include evaluation of additional individual laws, administrative rules, or minimum standards, or any conditions or restrictions. See [4140](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4140) Preparing for Inspections.

#### 4127 Monitoring and Investigation Inspections

LPPH DRAFT 8737-CCL (new item)

*Monitoring and investigation* inspections include the investigation of a report during a monitoring inspection.

See 4125 Investigation Inspections and 4126 Monitoring Inspections.

#### 4128 Other Types of Inspections

LPPH ~~December 2011~~ 8737-CCL (currently item 4127)

Other types of inspections are conducted for purposes other than determining compliance with pre-identified minimum standards, such as:

• consulting with an operation’s administrator or director;

• hand-delivering a corrective or adverse action notice;

• reviewing a provider plan of action with an operation’s director or administrator; or

• conducting an investigation interview.

#### 4141 Preparing for Application, Initial, and Monitoring Inspections

LPPH ~~October 2013~~ 8737-CCL (title is revised)

Policy

Licensing staff prepare for each application, initial, or monitoring inspection by reviewing the:

• operation’s record;

• last enforcement action recommended for the operation;

• frequency of inspections of the operation;

• operation’s compliance history, as documented in the CLASS system;

• operation’s fee payment history;

• operation’s background check records, as documented in the CLASS system;

• operation’s controlling person list, as documented in the CLASS system;

• recommendations from enforcement team conferences (for inspections of residential operations except independent foster homes); and

• results of random-sampling inspections of CPA foster homes (for inspections of CPAs only).

Licensing staff use the information obtained during the review to determine which minimum standards to evaluate during the planned inspection.

If deficiencies with standards that pose a risk to the health and safety of children were cited during a previous inspection, Licensing staff must reevaluate the same and related standards at the inspection.

Draft Form 2936 Child-Care Facility Inspection

Staff must create and save the initial draft of Form 2936 Child-Care Facility Inspection in CLASS before conducting the inspection. See [4161](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4161) Completing CLASS Form 2936 Child-Care Facility Inspection.

For information on preparing for investigation inspections, see [4142](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4142) Preparing for Investigation Inspections.

Procedure

Reviewing Background Materials

To prepare for an inspection, Licensing staff review all of the following:

a. The most recent information in the CLASS system on enforcement recommendations for the operation, including the recommendation, the enforcement actions taken by other Licensing staff, and the operation’s recommended monitoring frequency

b. The capacity of the operation, the ages of the children served, the hours of operation (including days and months), and the services provided

c. The operation’s address, including the *Location Address Validation Status* and *Mailing Address Validation Status*, to determine whether either status is set to *Not Validated*

d. The directions to the operation

e. The name of the designated director, operator, or licensed administrator

f. The qualifications of the designated director or operator

g. The last renewal date of the license of a designated director or licensed administrator, if applicable

h. A history of the operation, including all of the following:

• Prior investigations, including investigation and inspection findings and technical assistance provided

• Prior inspections, including findings and technical assistance provided

• Minimum standard rules that may need to be reevaluated for compliance

• Conditions and expiration dates of any waivers, variances, and risk evaluations

• Results of random-sampling inspections for CPA foster homes (for inspections of child-placing agencies only; see [4431](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4300.asp#LPPH_4431) Using Random-Sampling Inspections to Regulate a Child-Placing Agency)

i. The operation’s fee payment history to determine whether the operation is current on all applicable fees, unless the operation is exempt from paying all fees (see [5260](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5000.asp#LPPH_5260) Verification of Fee Payment)

j. The operation’s background check records in CLASS to verify that the operation has complied with all background check requirements (see [5300](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5300) Central Registry and Criminal History Searches)

k. The operation’s controlling person list in CLASS to determine whether any person on the list has a status of *Review* (see [7773.4](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7773_4) Reviewing the Status of a Sustained Controlling Person in CLASS for procedures to follow when a person has a status of *Review*)

l. Recommendations from enforcement team conferences (for inspections of CPAs and RTCs; see [4441](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4300.asp#LPPH_4421) Enforcement Team Conferences for Child-Placing Agencies, General Residential Operations, and Residential Treatment Centers)

m. Optional checklists, forms, reading guides, and applicable technical assistance materials

Create a Draft Inspection Form in CLASS

After reviewing the background materials related to an operation but before conducting the inspection, Licensing staff:

• complete a draft inspection Form 2936 Child-Care Facility Inspection, located in CLASS; and

• upload the draft Form 2936 to CLASSMate.

See [4161](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4161) Completing CLASS Form 2936 Child-Care Facility Inspection.

##### 4141.1 Monitoring Inspections During an Investigation

LPPH ~~August 2012~~ 8737-CCL

Policy

If an operation is under investigation, inspectors consult with the Licensing supervisor while preparing for the inspection to determine whether an inspection will interfere with the investigation. Licensing staff do not conduct an inspection if it would interfere with an ongoing investigation.

#### 4157 Avoiding Duplication of Child Day-Care Inspections by State Agencies

LPPH ~~August 2012~~ 8737-CCL

Policy

To eliminate redundancy, Licensing uses forms generated in the CLASS system to coordinate with other state agencies that inspect the same operations as Licensing:

Licensing staff do not monitor an operation for compliance with minimum standards when another state agency has inspected it for compliance with equivalent standards.

Licensing staff always investigate reports of alleged violations of minimum standards, regardless of whether another state agency has inspected the operation.

Texas Human Resources Code [§42.044(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.044)

Procedure

The entities that inspect child day care operations for compliance with standards that are equivalent to Licensing’s minimum standards are:

• the Immunization Branch of the Texas Department of State Health Services (DSHS);

• the State Fire Marshal’s Office (SFMO);

• the Child and Adult Care Food Program (CACFP) of the Texas Department of Agriculture; and

• the child care management services (CCS) contractor for the Texas Workforce Commission’s local workforce development boards

No Action by Licensing

Licensing staff do not inspect an operation if another agency:

• inspected the operation for compliance with equivalent minimum standards within a year before the Licensing inspection; and

• found the operation to be in compliance, or the operation provides documentation showing that it has corrected deficiencies to the satisfaction of the other agency.

Actions Required by Licensing

If a state agency other than Licensing finds that an operation is not in compliance with licensing law, administrative rules, or minimum standards and the operation does not correct the deficiencies, Licensing staff:

• evaluate the operation’s compliance with applicable DFPS minimum standards to ensure protection of the children;

• document any compliance or correction issues; and

• obtain a copy of the other agency’s report for the hard copy record, if possible.

In All Cases

In all cases, during each inspection of an operation, Licensing staff:

• evaluate the operation for obvious fire, sanitation, and safety hazards; and

• cite in CLASS on Form 2936p2a or Form 2936p2b the deficiencies observed.

##### 4161.2 Documenting Inspection Results on CLASS Form 2936

LPPH ~~August 2012~~ 8737-CCL

Procedure

Licensing staff document the following on CLASS Form 2936 Child Care Facility Inspection:

1. The finding (non-compliant, compliant, or pending) for each Licensing statute, administrative rule, or minimum standard that was evaluated during the inspection (see [4161.21](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4161_21) Documentation of the Findings Evaluated From the Inspection)

2. Technical assistance provided, if any (see [4154.2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4154_2) Documenting Technical Assistance)

3. The review of restrictions and conditions (for initial and monitoring inspections only; see [4152](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4152) Reviewing Restrictions and Conditions)

4. A list of any hazards that the operation must correct immediately

5. Whether Licensing staff assessed risk to children as required during the operation walk-through by checking the *…items regarding risk to children…* checkbox. Licensing staff check the …*items regarding risk to children*… checkbox for all application, initial, and monitoring inspections.

See:

[4151](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4151) Operation Walk-Throughs

[4156](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4156) Visiting an Operation to Conduct an Investigation Interview When the Operation Is Not the Subject of the Investigation

6. If conducting an application, initial, or monitoring inspection, information to indicate if Licensing staff has ensured the operation has complied with background check requirements. If appropriate, the *Background Checks have been Verified/Evaluated* checkbox is checked (see [5380](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5380) Determining Compliance with Background Check Requirements).

7. If conducting an application, initial, or monitoring inspection, information to indicate that the inspector has discussed the list of controlling persons, as documented in CLASS, with the person in charge. If appropriate, the inspector checks the *Controlling Persons Have Been Verified* checkbox.

See:

[4153.3](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4153_3) Reviewing Information on Controlling Persons

[4171](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4171) Discussing the Results of the Inspection

[5400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5400.asp#LPPH_5400) Controlling Person

8. If conducting a follow-up inspection, Licensing staff document:

• a list of all of the deficiencies or conditions being followed-up on and a finding of *NC* (deficient) or *CO* (compliant); and

• a narrative explaining how the operation is compliant or the efforts the operation has made toward compliance

9. If conducting an inspection at a licensed child care center, whether the designated director is present during the inspection. See [4133](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4133) Minimum Frequency of Monitoring Inspections for Licensed Operations

#### 4163 Final Determination of Findings Left Pending During an Inspection

LPPH ~~August 2012~~ 8737-CCL

Policy

Within 10 days after completing an inspection, Licensing staff must:

• determine whether the operation is deficient or compliant regarding any pending inspection findings coded as *Monitoring*; and

• document the final determinations on a supplemental Form 2936 Child-Care Facility Inspection and mail or email it to the operation. See [4165](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4165) Creating a Supplemental Inspection Form.

DFPS Rules, 40 TAC §§[745.8447(1)](http://texreg.sos.state.tx.us/public/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=8447); [745.8445](http://texreg.sos.state.tx.us/public/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=8445)

### 4170 Conducting the Exit Conference

LPPH ~~March 2014~~ 8737-CCL

Policy

After completing an inspection, Licensing staff conduct an exit conference with the person in charge at the operation. During the conference, staff:

• discuss the results of the inspection, including the reason for any deficiency issued;

• review, but do not provide copies of, all photographs that were taken during the inspection that relate to deficiencies;

• provide any technical assistance that may assist the operation in addressing issues that have been identified and documented;

• review the requirements and time frames to request an administrative review, if any deficiencies were issued; and

• provide a copy of CLASS Form 2936 Child Care Facility Inspection to the person in charge.

See:

[7711.3](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7711_3) Explaining the Right to an Administrative Review

[8230](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_8000.asp#LPPH_8230) Confidential Information Not for Release to the Public

Texas Human Resources Code [§42.0441](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.0441)

DFPS Rules, 40 TAC §§[745.8495](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8495); [745.8801 – 8811](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=19&ch=745&sch=M&div=1&rl=Y)

When conducting the exit conference for an initial or monitoring inspection, Licensing staff also:

• verify the operation’s contact information; and

• review the operation’s compliance history, including concerns or patterns, with the person in charge.

#### 4172 Signing and Providing a Copy of Form 2936 Child Care Facility Inspection

LPPH ~~August 2012~~ 8737-CCL

Procedure

At the end of the exit conference, Licensing staff ask the person in charge to sign CLASS Form 2936 Child Care Facility Inspection, even if the findings are left pending. Licensing staff explain that signing Form 2936 does not indicate that the person signing agrees with the inspection results. It is only an acknowledgment that Licensing conducted an inspection at the operation and does not waive the operation’s right to an administrative review.

Both the Licensing staff and the person in charge at the operation sign Form 2936. If the person in charge refuses to sign Form 2936, Licensing staff note on the inspection form the person’s name and his or her decision not to sign.

After Form 2936 is signed by Licensing staff and the person in charge, Licensing staff provide the person in charge with a printed or emailed copy of the completed form before leaving the operation.

If the operation is required to post Form 2936 in a prominent place where it may be viewed by staff, parents, and others, Licensing staff must explain this to the person in charge before leaving the operation.

See:

[4160](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4160) Documenting the Results of an Inspection

[4161](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4161) Completing CLASS Form 2936 Child Care Facility Inspection

[4173](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4173) Posting the Day Care Inspection Form or Assessment Form