**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.

Revisions Related to Changes in Enforcement Policy (PATS 9422)

Revision of section 7000 of the LPPH to implement changes to the Department’s enforcement policy recommended by the Sunset Advisory Commission in August 2014 and required by Senate Bill 206, Sections 81 and 82. Additionally, LPPH 4330-4334 is being moved to 7000 and revised in support of these changes.

Display of Revisions with Changes Highlighted (Word Document)

See:

Definitions of Terms

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~~Appendix 7000-1: Assessing the Need for Remedial Actions~~

**Appendix 7000-1: Factors to Consider for Enforcement Actions**

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## Definitions of Terms

LPPH ~~March 2016~~ DRAFT 9422-CCL

**corrective action:** A type of enforcement action that licensing may impose to address an operation’s deficiency without requiring it to close. Corrective actions are not imposed against listed family homes. Evaluation and probation are the two types of corrective actions. See 40 TAC §§[745.8603](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=8603) and [745.8631](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=8631).

**corrective action plan:** A plan used to remedy the deficiencies of an operation that is under evaluation or on probation. **Exception**: Corrective action plans are not used with listed family homes.

**evaluation:** A type of corrective action for which Licensing imposes a corrective action plan. Conditions will be imposed beyond the minimum standards and the basic permit requirements, and inspections will be conducted monthly. See 40 TAC [§745.8631(2)](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=8631).

**plan of action:** A voluntary enforcement action that Licensing recommends to an operation in order to encourage the operation to actively participate in developing a plan to correct compliance with Licensing statues, administrative rules, or minimum standards. See 40 §TAC [745.8631(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=8631).

**probation:** A type of corrective action for which Licensing imposes a corrective action plan that is more restrictive and intense than an evaluation. Conditions will be imposed beyond the requirements of the minimum standards and the basic permit, and inspections will be conducted monthly. See 40 TAC [§745.8631(3)](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=8631).

**enforcement actions:** Actions Licensing may impose if an operation is deficient in a minimum standard, rule, law, specific term of a permit, or condition of evaluation, probation, or suspension. There are four types of enforcement actions; voluntary and corrective, adverse, judicial, and monetary actions. See 40 TAC §§[745.8601](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8601) and [745.8603](http://texreg.sos.state.tx.us/public/readtac$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=8603).

##### 3213.1 Governing Body and Licensing Responsibilities

LPPH ~~September 2015~~ DRAFT 9422-CCL

Procedure

At the pre-application interview, the inspector explains to the applicant or the applicant’s governing body designee that the governing body:

• is responsible for maintaining compliance with statutes, administrative rules, and minimum standards; and

• must complete and submit a separate application for each operation subject to regulation that it plans to operate.

Licensing informs the governing body of any enforcement action that may be taken against the operation if it fails to maintain compliance with statutes, administrative rules, and minimum standards.

##### 3521 How to Renew an Initial License

LPPH ~~September 2015~~ DRAFT 9422-CCL

Procedure

The inspector discusses the recommended decision to renew the initial license with the permit holder. The inspector informs the operation that a new application must be submitted and a fee for the new initial license must be paid.

The governing body may submit a new application or may re-sign and re-date the original. If the permit holder agrees, the inspector proceeds with acceptance of the new application and renewal of the initial license.

The second initial permit may be entered into the CLASS system any time up to the first day after the first initial permit expires. For example, if the initial permit expires August 31, the second initial permit must be entered in CLASS no later than September 1.

The inspector develops a plan of action for the operation to achieve compliance during the second initial period, as appropriate. If the permit holder does not agree, the inspector informs the permit holder that a denial of the non-expiring license will result and the operation must close.

DFPS Rules, 40 TAC §§[745.347](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=347); [745.349](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=349); [745.353](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=353)

See also:

7350 Plan of Action

[7600](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7600) Adverse Actions

[7620](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7620) Criteria for Taking Adverse Action

#### 4128 Other Types of Inspections

LPPH ~~December 2015~~ DRAFT 9422-CCL

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

a. consulting with an operation’s administrator or director;

b. hand-delivering a corrective or adverse action notice; or

c. conducting an investigation interview.

##### 4152.2 When an Operation Repeatedly Fails to Meet Restrictions or Conditions

LPPH ~~June 2015~~ DRAFT 9422-CCL

If the operation repeatedly fails to meet the restrictions or conditions, Licensing staff consult with the supervisor on what action to take.

See:

[3800](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.asp#LPPH_3800) Handling Changes in an Operation

[5140](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5000.asp#LPPH_5140) Rescinding or Amending a Waiver or Variance

[5300](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5300) Central Registry and Criminal History Searches

[7000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7000) Voluntary Actions and Enforcement Actions

#### 4159 Handling Resistance or Refusal to Allow Inspection

LPPH ~~August 2012~~ DRAFT 9422-CCL

Policy

An operation’s employees must admit Licensing staff and not delay or obstruct Licensing staff from making inspections during hours of operation.

Texas Human Resources Code §§[42.044(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.044) and [42.04412](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.04412)

DFPS Rules, 40 TAC §§[745.8413](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8413), [745.8415](http://texreg.sos.state.tx.us/public/readtac$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=8415), [745.8419](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=8419)

Procedure

If the employees of an operation delay or obstruct Licensing from making an inspection during the operation’s business hours, Licensing staff follow the procedures outlined below.

| If … | then … |
| --- | --- |
| the operation’s employees:  a. refuse to admit Licensing staff to the operation;  b. attempt to delay or obstruct Licensing staff from inspecting the operation during business hours;  c. refuse to allow Licensing staff to inspect an area of the operation that affects or could affect the children’s health, safety, or well-being; or  d. delay or obstruct an attempt to inspect or investigate, so that Licensing staff cannot carry out their responsibilities … | Licensing staff:  a. advise the person in charge of the operation that:  • the inspection or investigation is authorized by Texas Human Resources Code [§§42.044(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.044) and [42.04412](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.04412), and  • DFPS may take enforcement action against the operation’s permit if the resistance continues.  b. obtain the name of the person in charge at the operation, if possible;  c. cite obstruction of the inspection or investigation and violation of DFPS rules using Form 2936 Child-Care Facility Inspection in the CLASS system. Include documentation on the form that, if Licensing inspections are further denied, obstructed, or delayed, DFPS may take enforcement action against the operation’s permit under Texas Human Resources Code [§§42.071](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.071) and [42.072](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072);  d. consult with the Licensing supervisor about the necessary follow-up actions;  e. see [7200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7200) Handling Immediate Danger to Children, if children are in immediate danger;  f. take one or more of the following actions, depending on the circumstances:  • Schedule an appointment with the permit holder or applicant  • Make an unannounced inspection of the operation |

#### 4171 Discussing the Results of an Inspection

LPPH ~~October 2013~~ DRAFT 9422-CCL

Procedure

During each exit conference, Licensing staff do as follows:

• Allow the person in charge an opportunity to discuss the findings

• Provide the person in charge with the following, if applicable:

a. Any technical assistance needed to address issues that were identified and documented during the inspection, if applicable. (See [4154](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4154) Technical Assistance.)

b. Information about how high-risk deficiencies or a pattern of deficiencies may affect the frequency of inspections

c. Information about how failure to comply within specified deadlines or repeated deficiencies may result in enforcement action without further opportunity to correct the deficiencies

d. Information about how to comment on the inspection by completing the [CCL Inspection Feedback Survey](http://www.surveymonkey.com/s/2Y53382). (The Web address for the survey is printed on CLASS Form 2936 Child-Care Inspection Form, which Licensing staff provide before leaving the operation.)

e. Information about how the operation may request an administrative review in writing within 15 days of receiving the results of the inspection and information on what the request must include to be considered complete. (See [7713](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7713) Receiving a Request for an Administrative Review.)

Additional Requirements for Initial and Monitoring Inspections

During each exit conference for an inspection with a category of *Initial* or *Monitoring*, Licensing staff also:

• review with the person in charge the operation’s compliance history since the previous monitoring inspection, including any concerns or patterns of deficiencies; and

• verify the accuracy of the information entered on the *Operation Main* page in CLASS.

If either the *Location Address Validation Status* or *Mailing Address Validation Status* is set to *Not Validated,* Licensing staff must review the address with the person in charge. If the person in charge indicates that either the location or mailing address in CLASS is inaccurate, the inspector:

• documents the correct information in a *Chronology* (category, *Operation General*); and

• enters the corrected address in CLASS and attempts to validate the address according to the procedures in [1600](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_1600.asp#LPPH_1600) Validating an Address in CLASS following the inspection.

#### 4313 When an Operation Continues to Be Deficient

LPPH ~~January 2012~~ DRAFT 9422-CCL

Procedure

If an operation continues to be deficient after the deadline for correcting a deficiency, Licensing staff determine which of the following actions to take based on an assessment of the risk to children, the scope and severity of the deficiency, and the operation’s overall compliance history:

• Re-cite the deficiency during the follow-up inspection or by assessment (see [4200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4200) Citing Deficiencies With an Assessment); or

• Extend the time limit for correction (may require supervisory approval. See [4322](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4300.asp#LPPH_4322) Granting an Operation Additional Time to Comply With a Requirement Cited as a Deficiency).

In addition to taking one of the above actions, Licensing staff may:

a. issue a warning letter and conduct a follow-up with an inspection;

b. expedite the next monitoring inspection; or

c. recommend enforcement action such as a plan of action, corrective action, adverse action, or administrative penalties.

See:

[4340](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4300.asp#LPPH_4340) Sending a Warning Letter and Following Up With an Inspection

[4510](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4300.asp#LPPH_4510) The CLASS Risk Review and Enforcement Recommendations

[7000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7000) Voluntary Actions and Enforcement Actions

[Appendix 7000-1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000.asp#LPPH_apx7000_1): Factors to Consider for Enforcement Actions

### 4330 Sending a Warning Letter and Following Up With an Inspection

LPPH ~~November 2009~~ DRAFT 9422-CCL (NUM, REV)

Policy

Licensing staff send a warning letter to caution the governing body of a child-care operation about the risks identified during recent inspections.

The warning letter prompts the operation to:

• resolve patterns of deficiencies in a timely manner; and

• maintain compliance with the law, administrative rules, and minimum standard rules on an ongoing basis.

A subsequent follow-up with an inspection is required each time Licensing staff send a warning letter. The date for the inspection is set at the discretion of Licensing staff.

Licensing staff:

• conduct the follow-up inspection; and

• review the operation’s compliance report (available in CLASSMate).

Procedure

When risks are identified during an inspection, Licensing staff take the following actions in the CLASS system:

a. Alert the operation about the risks by sending a warning letter ([Form 2939](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2939.doc) Warning Letter).

b. Compile a compliance history of the operation, using the CLASS system or CLASSMate.

c. Set a date for a follow-up inspection on the *Enforcement Recommendation* page.

d. Review the compliance history report with the director or person in charge of the operation, during the follow-up inspection.

e. Follow up on deficiencies previously noted on the compliance history report.

If two warning letters are issued within 24 months, Licensing staff work with a Licensing supervisor to determine whether to take enforcement action or consider taking other actions if the operation’s risk level does not improve.

## 4500 Evaluating Risk to Children

LPPH ~~May 2012~~ DRAFT 9422-CCL

Policy

Licensing staff must continuously evaluate each operation’s performance in terms of risk to children in order to determine appropriate enforcement actions to reduce such risk throughout the duration of an operation’s permit.

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

When evaluating risk to children, Licensing staff consider the following:

a. The nature of the activity (inspection or investigation) that generated the current *Enforcement Recommendation*, including any associated deficiencies

b. The compliance history of the operation during the most recent two-year period, including:

• the total number of deficiencies;

• the weight associated with each deficiency;

• repetition of particular standard deficiencies; and

• patterns of deficiencies (for example deficiencies mainly concentrated in a particular subchapter)

c. The scope and severity of each deficiency, including:

• ages of children involved;

• number of staff involved;

• any injury or harm caused;

• the effect of any injury or harm; and

• similarities with previous deficiencies

d. Any pending investigations

e. The history of abuse or neglect investigations, especially those that resulted in a disposition of either *Reason-to-Believe or Unable-to-Determine*

f. Any investigations of serious incidents, especially those that resulted in an injury

g. Response to past technical assistance offered, including warning letters and provider plans of action

h. Any prior enforcement actions (see [7000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7000) Voluntary Actions and Enforcement Actions)

If Licensing staff discover a threat of immediate danger to children in care at an operation, staff must take action. See [7200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7200) Handling Immediate Danger to Children.

Procedure

Here are some questions (by area) to consider when assessing risk:

Population and Services

a. What age range does the operation serve?

b. What are the hours of operation?

c. What services does the operation provide?

d. Were children in care during the last inspection?

Personnel

a. Are the director, administrator, and the operation’s professional staff qualified to hold their respective positions at the operation?

b. Does the director or administrator maintain an adequate presence at the operation?

c. Are the director, or administrator, and the operation’s staff and caregivers aware of and knowledgeable about the minimum standard rules?

d. Does the person in charge have the authority to make changes or corrections? Is the person in charge knowledgeable about the minimum standard rules?

e. What is the level of experience of the staff?

f. Is adequate staff training and orientation provided?

g. What is the frequency of staff turnover?

h. Are approved risk evaluations in effect? If so, how many approved risk evaluations are in effect and for what type of background check findings? Are there any patterns in the type of charges or abuse or neglect allegations upon which the risk evaluations were conducted? Are conditions of the approved risk evaluations met?

Physical Facilities

a. Are repairs to the physical building and outdoor equipment made promptly?

b. Are staff mindful of environmental factors (location, physical facilities, proximity to sex offenders, and so on) that may present a hazard to children in care?

c. Are fire and health inspections kept current and are corrections made promptly?

Compliance History

a. Are waivers or variances in effect and, if so, how many? Are conditions of the waivers or variances met?

b. Have there been significant changes in the operation’s compliance history? If so, do changes in performance correlate with any specific factors at the operation (for example, a new director, change in season, staff shortage)?

c. Are deficiencies that have been recently cited related to high-risk standards (such as infant care, quality of supervision, child/caregiver ratio, and emergency behavior intervention)?

d. Have deficiencies been addressed appropriately and in a timely manner? Are there repeated deficiencies?

e. Do the staff or caregivers appear to recognize how continued deficiencies will affect the children?

f. Is the operation responsive to technical assistance?

g. Has the operation historically initiated corrections on its own, or waited for additional regulatory action to be implemented before correcting deficiencies?

h. How many warning letters has Licensing sent to the operation during the past 24 months?

i. Has the operation previously completed and implemented a Plan of Action ([Form 7277](http://intranet/Application/Forms/showFile.aspx?Name=J-800-7277.docx))?

j. Have monetary penalties been assessed against the operation?

k. Is the operation on or has it ever been on evaluation or probation?

l. Were previous Licensing actions successful at reducing risk?

Investigation History

a. How many reports of potential problems (investigations) has Licensing received about the operation? Did Licensing ultimately cite the operation for deficiencies?

b. What percentage of the reports received were self-reports? How many reports should have been self-reported but were not?

c. Is there a trend in the type of allegations or serious incidents reported?

d. What are the ages of the children involved in any deficiencies or questionable situations?

e. Did any of the reports result in substantiated determinations of abuse or neglect?

#### 4511 Enforcement Action Options

LPPH ~~January 2011~~ DRAFT 9422-CCL

Procedure

Each enforcement action option represents an action that Licensing may take with regard to an operation based on the risk presented to children in care. Depending upon the situation, enforcement actions may be selected individually or in combination with other enforcement actions.

All of the following options are available in every *Enforcement Recommendation*. The page layout varies depending upon the operation’s current risk as determined by the CLASS *Risk Review*.

No deficiencies cited. Follow monitoring frequency

This means that no action is being taken at this time. Staff do not select this recommended action if any other enforcement actions are selected, even if no deficiencies were cited at the current inspection.

Follow-up without inspection

See [4312](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4300.asp#LPPH_4312) When a Follow-Up Inspection Is Not Required. This recommendation should be used when deficiencies were cited but do not warrant a physical follow-up. When this option is selected, CLASS *Follow-Up* and *Chronology* entries must clearly document how the inspector determined compliance. The decision to follow-up with or without an inspection should be based upon the nature of the deficiencies cited at the most recent inspection(s).

Follow-up with inspection

See [4311](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4300.asp#LPPH_4311) When a Follow-Up Inspection Is Required. This action indicates that the inspector will conduct a follow-up inspection to determine compliance on specific deficiencies. Staff select this action any time that deficiencies necessitate a physical follow-up, even if this action is not included in the *Recommended Actions Based on Risk*. A *Scheduled Date* is required when this option is chosen. This date should be the date upon which the follow-up inspection is planned.

Plan of Action

See 7350 Plan of Action. A plan of action is a voluntary enforcement action that Licensing recommends to an operation in order to encourage the operation to actively participate in developing a plan to correct compliance with Licensing statues, administrative rules, or minimum standards.

Warning letter and follow-up with inspection

See [4340](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4300.asp#LPPH_4340) Sending a Warning Letter and Following Up With an Inspection. A warning letter ([Form 2939](http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2939.doc)) should be issued to caution the governing body of a child-care operation about the risks identified during recent inspections. The warning letter prompts the operation to resolve patterns of deficiencies in a timely manner and to maintain compliance on an ongoing basis.

The inspector is required to conduct a follow-up inspection with this action, and the date of the follow-up inspection must be scheduled in the *Scheduled Date* field.

Expedite monitoring inspection

Staff select this action when risk at the operation warrants conducting a monitoring inspection prior to the *Next Inspection Due Date* from the *Enforcement Recommendation*.

• The expedited monitoring inspection is an interim inspection. If the operation does not demonstrate improved compliance at the expedited inspection, staff consider additional action.

• A *Scheduled Date* is required when this action is chosen. In many cases, if risk warrants an expedited inspection, the date of the expedited inspection should be no more than a few months after the inspection that prompted the action in order to reduce risk.

Monetary Penalties

See [7500](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7500) Administrative Penalties. Monetary, or administrative, penalties are fines that Licensing may impose against certain operation types or the controlling person of any residential operation. Monetary penalties can be assessed when the operation:

a. violates a standard based in law as provided in Human Resources Code (HRC) [Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm);

b. makes a false statement about a material fact either on an application or in response to a matter under investigation;

c. refuses to allow an inspection;

d. purposefully interferes with an inspection or investigation;

e. fails to pay a penalty assessed under HRC 42;

f. commits repeated deficiencies that present low to medium risk; or

g. fails to comply with an evaluation or probation plan after time limits for correction have expired.

Evaluation

See [7400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7400) Corrective Action. Evaluation is a type of corrective action for which Licensing imposes a corrective action plan. Conditions are imposed beyond the minimum standards and the basic permit requirements, and inspections are conducted monthly.

Probation

See [7400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7400) Corrective Action. Probation is a type of corrective action for which Licensing imposes a corrective action plan that is more restrictive and intense than an evaluation. Conditions are imposed beyond the requirements of the minimum standards and the basic permit, and inspections are conducted monthly.

Adverse Amendment

See [7600](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7600) Adverse Actions. Adverse amendments are a type of adverse action in which an existing permit is voided and the permit is then reissued with new or additional restrictions or conditions. An adverse amendment may be imposed when the permit holder fails to make corrections to deficiencies and does not agree to a change that the inspector is recommending as an enforcement action.

Involuntary Suspension

See [7600](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7600) Adverse Actions. In an involuntary suspension, Licensing takes away the permit holder’s authority to operate for a specific period of time so that deficiencies may be corrected. The operation must close during a suspension. Suspension may be imposed following criteria in the [7000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7000) Voluntary Actions and Enforcement Actions section when deficiencies create an endangering situation, an immediate threat or danger to the health and safety of children, or when there are indications of a continued failure to comply with the rules or law.

Injunction

See [7740](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7740) Injunctive Relief. If circumstances at the operation are determined to be so extreme that immediate intervention is warranted (there is substantial risk of immediate harm to the health and safety of children in care), the inspector may make a referral for legal action (injunctive relief) simultaneously with the mailing of the notice of an intent to deny, revoke, or suspend.

Denial

See [7600](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7600) Adverse Actions. Denial is the refusal to grant a permit or an amendment to a permit. Denial would typically only be used in an *Enforcement Recommendation* if the operation has applied for a permit amendment, since no *Enforcement Recommendation* will be generated until after an operation’s full permit has been issued.

Revocation

See [7600](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7600) Adverse Actions. Revocation is the cancellation of a permit, and the operation must close. Revocation may be imposed following criteria in the [7000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7000) Voluntary Actions and Enforcement Actions section when deficiencies create an endangering situation, an immediate threat or danger to the health and safety of children, or when there are indications of a continued failure to comply with the rules or law. Although revocation may be pursued after a single serious incident, revocation typically occurs after other enforcement action options have been exhausted.

### 5350 Acting on the Results of a Criminal History Check

#### 5351 Determining Appropriate Actions Based on Criminal History

LPPH ~~March 2014~~ DRAFT 9422-CCL

Procedure

When notified that a person at an operation has a criminal history, the Centralized Background Check Unit (CBCU) uses the [DFPS Criminal Convictions charts](http://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/Criminal_Convictions.asp) to determine whether the person’s criminal history contains criminal offenses that:

a. violate the minimum standards;

b. are eligible for a risk evaluation; or

c. permanently bar the person from the operation while children are in care.

If a person is permanently barred, the CBCU inspector notifies the appropriate Licensing inspector.

For any felony offense not specifically enumerated in the relevant chart, the person must have an approved risk evaluation before being present at the operation, if:

• the person was convicted of the offense within the past 10 years; or

• the person is on parole for the offense.

A substantially similar federal offense or offense in another state is treated the same as a similar offense in Texas.

Criminal offenses that result in deferred adjudication — regardless of whether the court has dismissed the proceedings and discharged the person with deferred adjudication — are treated like convictions when the person is an applicant for a permit or an administrator’s license.

A person required to register as a sex offender in Texas may not be present at an operation while children are in care.

Criminal History Matches for Newly Designated Administrators

When a child-placing agency (CPA) or general residential operation (GRO) designates a new administrator, the residential Licensing inspector conducts a *Background Check – Results Search* on the designee in CLASS.

If there is a criminal history match for the administrator, the residential Licensing inspector contacts the CBCU inspector assigned to the operation so that the match can be evaluated for any bars or risk evaluations that may apply to the person in his or her role of administrator.

The residential Licensing inspector subsequently documents in CLASS:

• the time, date, and type of contact made with the CBCU; and

• the reason for the contact.

All of the data is entered in the *Chronology* under the category type *Background Check* that appears under the name of the operation.

If the CBCU inspector determines that the administrator is barred from being an administrator, the following actions are taken:

1. The CBCU inspector notifies the operation and residential Licensing inspector that the person may not serve as administrator.

2. The residential Licensing inspector contacts the Licensing staff person at the DFPS state office in Austin who handles the administrator licensing program, so that enforcement action may be taken against the administrator’s license.

If the CBCU inspector determines that the administrator qualifies for a risk evaluation for the role of administrator and the operation requests a risk evaluation, the CBCU inspector informs the operation that the person may not be present at the operation as administrator while the risk evaluation is being processed.

DFPS Rules, 40 TAC §§[745.651](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=651); [745.655](http://texreg.sos.state.tx.us/public/readtac$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=655); [745.656](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=656); [745.695](http://texreg.sos.state.tx.us/public/readtac$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=695); [745.696](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=696)

#### 5454 Documenting the Eligibility of a Controlling Person by Updating the Status in CLASS

LPPH ~~December 2012~~ DRAFT 9422-CCL

Policy

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

a. is eligible to serve as a controlling person;

b. is ineligible to serve as a controlling person;

c. has ceased to serve as a controlling person at an operation; or

d. was entered in error.

Procedure

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

| The *Status* selected is … | when … |
| --- | --- |
| *Pending …* | a new record on a controlling person is entered for the operation.  *Pending* is the default value when adding or associating a controlling person record. |
| *Identified …* | a controlling person has no history that prohibits the person from being a controlling person (that is, the person is eligible to be a controlling person).  *Identified* is the status for each person who is:  1. currently serving as a controlling person for the operation; and  2. is eligible to serve as controlling person. |
| *Rejected …* | an operation submits the name of a controlling person for consideration, but the person has a history that prohibits the person from being a controlling person (that is, the person is ineligible to be a controlling person). See [5454.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5400.asp#LPPH_5454_1) Entering the Reason for Rejecting a Controlling Person. |
| *Review …* | a controlling person is sustained because the person’s record is associated with an operation that had its permit revoked.  CLASS automatically updates the status to *Review* when this occurs. See [7000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7000) Voluntary Actions and Enforcement Actions |
| *Inactive …* | a controlling person ceases to be a controlling person at an operation.  A status is changed to *Inactive* only when an end date is entered. |
| *Withdrawn …* | a person is entered into CLASS in error (for example, entered under the wrong operation), or the operation withdraws the person from consideration. See [5454.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5400.asp#LPPH_5454_1) Entering the Reason for Withdrawing a Controlling Person.  This does not include when an operation removes a person from a controlling person role after being notified by Licensing that the person is ineligible to be a controlling person. |

### 5470 Additional Duties of Inspectors in Relation to Controlling Persons

LPPH ~~December 2012~~ DRAFT 9422-CCL

Policy

In addition to the duties explained in [5400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5400.asp#LPPH_5400) Controlling Person, inspectors also are responsible for the following:

a. Monitoring operations for compliance with the requirements related to an operation’s controlling persons in statute, administrative rules, and minimum standards (see [4000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4000) Inspections)

b. Ensuring that a person who is ineligible to be a controlling person at an operation that is regulated by Licensing does not serve in the role of a controlling person (see [7773.4](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)

c. Notifying controlling persons about corrective or adverse action taken against an operation (see [7110](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7110) Notifying an Operation When Licensing Takes Enforcement Action)

d. Designating a controlling person (see [7771](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7771) Choosing the Persons to Designate as Controlling)

e. Sustaining a designated controlling person (see [7770](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7770) Administrative Review and Due Process Hearing for a Designated Controlling Person)

##### 6332.5 Operation Refuses to Develop a Safety Plan

LPPH ~~December 2012~~ DRAFT 9422-CCL

Policy

If the operation refuses to develop a safety plan, the investigator must notify his or her supervisor. This includes situations in which:

• an operation continues to allow a person to have contact with children when Licensing has made the determination that the person’s continued contact with children poses a safety threat; and

• a provider of child care homes refuses to cease operating despite Licensing’s determination that the provider’s continued operation poses a safety threat to children.

Procedure

If the operation or provider refuses to develop a safety plan, the supervisor:

a. considers citing relevant deficiencies and taking enforcement action;

b. notifies the district director or residential manager; and

c. works with the Licensing attorney to consider immediate legal action.

See [7200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7200) Handling Immediate Danger to Children.

#### 6471 Obstruction by the Operation

LPPH ~~March 2013~~ DRAFT 9422-CCL

Procedure

If operation staff refuse, delay, or obstruct investigation attempts after being told the purpose of the investigation, Licensing staff inform the person in charge that Licensing staff have authority to investigate under applicable laws.

The operation must allow the investigator access to all children in care, staff, records, the physical plant, and any other information needed to conduct the investigation.

DFPS Rules, 40 TAC [§§745.8401](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8401); [745.8415](http://texreg.sos.state.tx.us/public/readtac$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=8415) ; [745.8417](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=8417)

Human Resources Code [§42.04412](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.04412)

Enforcement action may be taken against the operation if the person in charge of the operation refuses, prevents, or delays the inspection or investigation. See [7000](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7000) Voluntary Actions and Enforcement Actions.

DFPS Rules, 40 TAC [§745.8425](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=8425)

##### 6526.2 Completing Form 2058b When the Finding for a Child’s Death Is Reason to Believe

LPPH ~~September 2015~~ DRAFT 9422-CCL

If the finding of an investigation involving a child who died while living in a residential child care operation is *Reason to Believe*, the designated state office staff person:

• completes [Form 2058b](http://www.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2058b.docx) Child Fatality Completed Report for Release of Information to the Public; and

• sends the completed form to the lead investigation analyst or the analyst’s designee for approval.

The information entered on the form for release to the public includes:

a. the type of operation that the child was living in at the time of death;

b. the child’s name;

c. the operation’s name;

d. any history on the foster home, if the home was previously verified by the same or another child placing agency;

e. a listing of all investigations of abuse or neglect within the last five years that involve the operation or agency home, including:

1. the date that the investigation was initiated;

2. the type of allegation;

3. the disposition;

4. whether there was a criminal investigation of the child’s death;

5. whether criminal charges were filed related to the child’s death;

6. whether an investigation is pending an appeal of a finding; and

7. whether the investigation involved the deceased child.

f. any violations of the minimum standards at the operation or agency home within the last five years;

g. any violations of the minimum standards related to training requirements at the operation or agency home in the last five years;

h. a summary of enforcement actions against the operation, child placing agency, or agency home in the last five years; and

i. a summary of the training requirements for caregivers and employees.

##### 6526.3 Completing Form 2058c When the Finding for a Child’s Near Fatality Is Reason to Believe

LPPH ~~September 2015~~ DRAFT 9422-CCL

When a child suffers a near fatality while in care at a residential child care operation, the designated staff person at the DFPS state office completes [Form 2058c](http://www.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2058c.docx) Child Near Fatality Completed Report for Release of Information to the Public. An injury is considered near fatal when a medical professional determines that the child is in critical condition, such as when a child’s condition requires a stay in an intensive care unit.

Procedure

If the finding of an investigation involving a child who suffered a near fatality while living in a residential child care operation is *Reason to Believe*, the designated state office staff person:

• completes [Form 2058c](http://www.dfps.state.tx.us/application/Forms/showFile.aspx?NAME=2058c.docx) Child Near Fatality Completed Report for Release of Information to the Public; and

• sends the completed form to the lead investigation analyst or the analyst’s designee for approval.

The information entered on the form for release to the public includes:

a. the type of operation that the child was living in at the time of the near fatality;

b. the child’s *Person ID*;

c. the operation’s name;

d. any history on the foster home, if the home was previously verified by the same or another child placing agency;

e. a listing of all investigations of abuse or neglect within the last five years that involve the operation or agency home, including:

1. the date that the investigation was initiated;

2. the type of allegation;

3. the disposition;

4. whether there was a criminal investigation of the child’s near fatality,

5. whether criminal charges were filed related to the child’s near fatality;

6. whether an investigation is pending an appeal of a finding; and

7. whether the investigation involved the child with the near fatal injury.

f. any violations of the minimum standards at the operation or agency home within the last five years;

g. any violations of the minimum standards related to training requirements at the operation or agency home in the last five years;

h. a summary of enforcement actions against the operation, child placing agency, or agency home in the last five years; and

i. a summary of the training requirements for caregivers and employees.

##### 6542.3 Licensing Responsibilities

LPPH ~~June 2015~~ DRAFT 9422-CCL

Procedure

The inspector reviews the report for compliance with minimum standards and makes one of the following decisions:

a. Accepts the report as complete

b. Returns the investigation to the CPA if the inspector determines that the investigation is not thorough and includes specific instructions and timelines for the CPA to complete the documentation and return the report

c. Seeks supervisory approval to reclassify the investigation as a Priority 4 (see [6542.4](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6400.asp#LPPH_6542_4) Reclassifying an Investigation of an Agency Home as a Priority 4)

If the report is accepted, the inspector also:

a. cites the CPA if the CPA overlooked a deficiency, failed to address a complaint in the investigation, or identifies patterns of violations in the home.

b. documents the investigation in CLASS according to the policies outlined in [6542.5](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6400.asp#LPPH_6542_5) Documentation of Investigations by Child-Placing Agencies;

c. notifies the CPA about the results of the investigation using the CLASS Investigation Letter (see [6700](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6700) Documenting the Investigation); and

d. recommends to his or her supervisor if enforcement action should be taken against the CPA.

#### 6543 Agencies Responsible for Investigations in CPA and CPS Homes

LPPH ~~June 2015~~ DRAFT 9422-CCL

Policy

Reports alleging abuse, neglect, or exploitation in child placing agencies or agency homes are handled according to the chart below.

Procedure

Regardless of who conducts this investigation, residential licensing staff must obtain a copy of the investigation report and determine what, if any, violations should be cited and what, if any, enforcement action should be taken against the child placing agency.

The following chart shows which investigating agency to refer a report of abuse or neglect of a child depending on whether or not the child is in the care of a CPA or CPS home and the relationship of the alleged perpetrator to the child. A child living in the verified foster home of a relative or fictive kin is considered “in the care of an operation.”

In the chart below, the term *adoptive* refers to an adoption that is not consummated.

| If the alleged victim is: | And the alleged perpetrator is: | Refer to: |
| --- | --- | --- |
| A child who is not in care | A foster or adoptive parent living in the foster or adoptive home | • CPS, if the alleged victim is a minor who is a relative;  • law enforcement, if the alleged victim is another adult; or  • APS, if the alleged victim is an adult age 65 or older or an adult with a disability.  Licensing investigates possible standards violations and assesses the risk to children in care. |
| A child in care | A foster or adoptive parent | Licensing |
| A child in care | Someone living outside the foster or adoptive home (such as a neighbor) | Law enforcement |
| A child in care | An adult living in the foster or adoptive home other than the foster or adoptive parent | Licensing |
| A child who is not in care | An adult living in the foster or adoptive home other than the foster or adoptive parent | • CPS investigates the allegations and law enforcement is notified.  • Licensing investigates possible standards violations and assesses the risk to the children in care. |
| A child in care | A foster or adoptive parent who is related to that foster or adoptive child | Licensing |

See [6280](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6280) Referring a Report of Abuse or Neglect for Investigation When New Allegations Are Received During an Investigation

### 6910 Conducting a Case Review Before Recommending an Action

LPPH ~~March 2013~~ DRAFT 9422-CCL

Procedure

After an investigation is completed, if the recommendation is for enforcement action or increased monitoring, the investigator initiates a case review.

The review may be conducted in a face-to-face meeting, by telephone, or by email.

The review team includes the:

a. monitoring inspector;

b. investigation supervisor;

c. monitoring supervisor; and

d. investigator (if different from the inspector).

### 6940 Actions to Take Following an Investigation of an Unregulated Operation

LPPH ~~March 2013~~ DRAFT 9422-CCL

The recommended actions to take following the investigation of an unregulated operation may include:

a. setting time limits for the operation to submit an application if no risk to children is identified;

b. ensuring the operation is not providing care to children if risk to children has been determined;

c. follow-up to ensure that the application is submitted or the care subject to regulation is no longer offered; or

d. a referral for legal action if the operation continues to care for children and does not submit an application timely.

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

Texas Human Resources Code [§43.004](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.43.htm#43.004)

DFPS Rules, 40 TAC [§745.8933](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=8933)

# 7000 Voluntary Actions and Enforcement Actions

## 7100 Overview of Voluntary Actions and Enforcement Actions

LPPH ~~December 2009~~ DRAFT 9422-CCL (TTL, REV)

Policy

Voluntary Actions

Voluntary actions are actions initiated by the operation. Voluntary actions include the following:

a. withdrawal of an application

b. temporary relocation

c. voluntary suspension

d. voluntary closure

Enforcement Actions

Enforcement actions are actions Licensing initiates to ensure the safety of children in care at operations subject to regulation.

Enforcement actions include the following:

| Voluntary Enforcement Action | Corrective Actions | Monetary Actions | Adverse Actions | Judicial Actions |
| --- | --- | --- | --- | --- |
| • plan of action | • evaluation  • probation | • administrative penalty  • civil penalty | • denial of permit  • revocation of permit  • suspension of permit  • adverse amendment to permit | • temporary restraining orders  • injunctions |

Enforcement actions are not meant to be punitive in nature and are not taken in any certain order. Licensing recommends or imposes enforcement actions based on the seriousness of the situation and on the operation’s compliance history. Licensing does not have to recommend or impose a less restrictive action if Licensing determines that a more restrictive action is more appropriate.

Texas Human Resources Code (HRC), Chapter 42, [Subchapter D, Remedies](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#D) (§§42.0705-42.079)

DFPS Rules, 40 TAC [§745.8511](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8511); §[745.8601](http://texreg.sos.state.tx.us/public/readtac$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=8601); §[745.8603](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=8603) and §[745.8607](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=8607)

### 7110 Circumstances That May Call for Enforcement Action

LPPH DRAFT 9422-CCL (NEW)

Licensing may take an enforcement action under the circumstances listed below.

Abuse or Neglect

Enforcement action may be taken if abuse or neglect has occurred at the operation.

Deficiencies

Enforcement action may be taken if the operation has:

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

• several deficiencies that create an endangering situation.

Evaluation, Probation, or Suspension

Enforcement action may be taken if the operation fails to:

• meet the terms and conditions of evaluation or probation; or

• comply with minimum standards, licensing laws, or administrative rules after the suspension period has ended.

Emergency Closure

Enforcement action may be taken if there is substantial risk of immediate harm to the health and safety of children in care The operation is immediately closed (immediate enforcement, emergency closure and injunction).

Background Check

Enforcement action may be taken if issues are identified by a Central Registry background check or a criminal history check.

Adverse action is **not** taken and due process is **not** available when a listed home permit is automatically suspended or revoked because the listed family home failed to submit a 24-month background check by the due date.

Necessary Changes

Enforcement action may be taken if the permit holder fails to timely report necessary changes to Licensing.

Change of Location

Enforcement action may be taken if:

• the permit holder of a registered or listed home fails to notify Licensing staff within 15 days about a change in location; or

• a child-placing agency fails to give Licensing staff timely notification about a move.

See [3920](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.asp#LPPH_3920) Change of an Operation’s Location.

Problems With an Application

Enforcement action may be taken if, during the application process:

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

• an operation gives false information or false statements.

False Records

Enforcement action may be taken if an operation has falsified or permitted to be falsified records or materials required by Licensing.

Conditions on the Permit

Enforcement action may be taken if an operation fails to comply with the limits, restrictions, or conditions placed on the permit.

Refusal of an Inspection or Investigation

Enforcement action may be taken if someone at the operation refuses, prevents, or delays an inspection or investigation.

Applicant With a History in Another State

Enforcement action may be taken if an applicant:

• has a permit for a child care operation revoked in another state; or

• is barred from operating a child care operation in another state for reasons similar to those that would cause Licensing to take adverse action.

Applicant With a History With Another Texas State Agency

Enforcement action may be taken if an applicant has had a permit revoked, suspended, or terminated by another Texas state agency.

Public Notice and Hearing Requirements (residential child care only)

Enforcement action may be taken if an applicant or permit holder fails to comply with the requirements of a public notice or hearing, or the results of the hearing indicate that the community and/or children in care will be adversely impacted as outlined in 40 TAC §745.279.

Revoked or Relinquished Permit

Enforcement action may be taken if an applicant, who previously held a permit, applies for a permit to operate a child care operation within five years after:

• Licensing revoked the applicant's permit to operate a child care operation; or

• the applicant voluntarily closed a child care operation or relinquished a permit after receiving notice that Licensing:

• intended to take adverse action against the permit, or

• was taking adverse action against the permit.

Retaliation

Enforcement action may be taken if a child care operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides, in good faith, information relating to the misuse of restraint or seclusion at the operation.

Human Resources Code

Enforcement action may be taken for:

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

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

Controlling Person

Enforcement action may be taken if:

a. an operation fails to submit information to Licensing within two days of a change in controlling persons;

b. a designated controlling person applies for a permit before the due process for the designation is completed;

c. a sustained controlling person applies for a permit or is listed on the application for a permit within five years of the designation being sustained;

d. a person who has been denied a permit for a substantive reason applies for a permit within five years of the denial being sustained; or

e. a person who is associated with an operation whose permit has been denied or revoked by another HHSC agency for a substantive reason applies for a permit.

Conditions on an Individual

Enforcement action may be taken if an operation fails to follow conditions or restrictions placed on a person’s presence at an operation.

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

DFPS Rules, 40 TAC §745.279; §[745.431](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=431); §[745.433](http://texreg.sos.state.tx.us/public/readtac$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=433); §[745.435(d)](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=435); [§745.8605](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=8605) and §[745.8607](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=8607)

### 7120 Notifying an Operation When Licensing Takes Enforcement Action

LPPH ~~September 2012~~ DRAFT 9422-CCL (TTL, NUM)

Procedure

The inspector notifies all of the following persons when Licensing recommends or imposes an enforcement action against an operation:

a. The person in charge of the operation

b. The permit holder

c. The applicant or designee

d. The head of the governing body

e. Each controlling person

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

Publication note: Current 7120 is deleted.

## 7200 Handling Immediate Danger to Children

LPPH ~~December 2009~~ DRAFT 9422-CCL

Procedure

During an inspection or investigation, staff may discover conditions in a regulated or unregulated operation that pose a threat of immediate danger to children because of violations of the minimum standards, administrative rules or statutes.

If this occurs, the inspector or investigator consults with the supervisor, program administrator, or district director to determine whether it is necessary to take one or more of the following actions:

a. Request assistance from Child Protective Services.

b. Request assistance from fire, health, or law enforcement officials.

c. Remain at the operation until parents or managing conservators arrive or the dangerous situation is corrected.

d. Request that the permit holder or person in charge notify parents or managing conservators of the situation. If that person fails to do so, notify the parents or managing conservators.

e. Request that the supervisor report the situation to the appropriate CCL director. The director contacts the legal division and action is taken.

f. Remove the child or children from a residential operation if there is a substantial risk of harm and if the removal is approved by a CCL director.

See also:

[Appendix 7000-1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000.asp#LPPH_apx7000_1): Factors to Consider for Enforcement Actions

[7637](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7637) Emergency Suspension and Closure

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

### 7210 Immediate Danger in a State-Operated Facility

LPPH ~~December 2009~~ DRAFT 9422-CCL

Policy

If conditions are found that pose an immediate threat or danger to children in care in a state-operated operation because of violations of minimum standards, administrative rules, or statutes, the appropriate CCL director notifies the assistant commissioner of Licensing, who then notifies the commissioner.

The commissioner may notify the governor at his or her discretion.

## 7300 Voluntary Actions of the Operation

Publication note: All text currently under section 7300 is removed in this revision, leaving the introductory heading only. No changes in items 7310 – 7330.

#### 7331 Assessing and Granting a Request for Voluntary Suspension

LPPH ~~March 2015~~ DRAFT 9422-CCL (TTL, REV)

Policy

To assess a request for a voluntary suspension, Licensing staff must receive a written request from the operation that includes the following information:

a. The proposed dates for when the suspension will begin and end

b. The reason for the request

c. Plans for resuming operation; and

d. A statement about how the permit holder will meet the minimum standard rules at the end of the suspension period

Child care centers, before and after-school programs, school-age programs, licensed child-care homes, and registered child-care homes may request to have a permit suspended for a maximum of 90 days.

Residential child care operations may request to have a non-expiring permit suspended for a maximum of two years.

A voluntary suspension may not be granted while for a permit if the operation is under:

a. involuntary suspension;

b. automatic suspension;

c. probation; or

d. revocation proceedings.

DFPS Rules, 40 TAC §§[745.8519](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8519); [745.8521](http://texreg.sos.state.tx.us/public/readtac$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=8521); [745.8523](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8523); [745.8525](http://texreg.sos.state.tx.us/public/readtac$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=8525)

Procedure

When the inspector receives a request for voluntary suspension, he or she may grant, deny, or add conditions to the request.

To determine whether to grant a voluntary suspension, the inspector:

a. confirms that the operation is not undergoing involuntary suspension, automatic suspension, probation, or revocation proceedings;

b. evaluates the operation’s compliance history;

c. determines the reason for the voluntary suspension and the length of the operation plans to be closed is appropriate; and

d. confirms that no children will be in care during the voluntary suspension period.

#### 7332 Documenting the Voluntary Suspension

LPPH ~~March 2015~~ DRAFT 9422-CCL (TTL change only)

Procedure

If the inspector grants the voluntary suspension with or without conditions, the inspector:

a. changes the Operating Status on the Operationmain page in CLASS to No;

b. checks the Do Not Display On Public Website box on the Operationmain page;

c. competes the Provider Voluntary Suspension page in CLASS; and

d. sends the Voluntary Suspension Approval Letter Form 2865, located on the Provider Voluntary Suspension page in CLASS to the operation, notifying the operation of the decision to grant the suspension and the expectation that the permit holder to return the permit to the inspector.

If conditions are added to the voluntary suspension request, the inspector sends notice of the conditions with the Voluntary Suspension Approval Letter, Form 2865. The inspector documents the conditions in the Corrective Action Plan section of the Provider Voluntary Suspension page in CLASS.

### 7350 Plan of Action

LPPH ~~December 2009~~ DRAFT 9422-CCL (TTL, REV)

Policy

A plan of action is a voluntary enforcement action that is a collaborative effort between Licensing and an operation. The goal is to develop a plan to reduce risk and help improve the operation’s compliance with Licensing statutes, administrative rules, and minimum standards.

Because a plan of action is voluntary, an operation may decline to develop and follow a plan. If this occurs, Licensing may impose a more restrictive enforcement action if Licensing staff determines that risk cannot be mitigated without a plan and the operation meets the criteria for another enforcement action.

The timeframe for a plan of action is six months.

Because a plan of action is a voluntary action, it is not eligible for an administrative review.

DFPS Rule, 40 TAC §§[745.8611](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8611); [745.8613](http://texreg.sos.state.tx.us/public/readtac$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=8613); [745.8631(1)](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8631) and [745.8633(c)](http://texreg.sos.state.tx.us/public/readtac$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=8633)

#### 7351 Criteria for Recommending a Plan of Action

LPPH DRAFT 9422-CCL (NEW)

An operation is eligible to participate in a plan of action if a circumstance described in 7110 Circumstances That May Call for Enforcement Action exists and Licensing determines the operation meets all of the following criteria:

a. demonstrates the ability to identify risk;

b. accepts responsibility for correcting deficiencies;

c. has the ability to make corrections;

d. has a history of making corrections to maintain compliance, if applicable;

e. will be able to mitigate risk by following the plan of action; and

f. has not participated in a voluntary plan of action during the previous 12 months for similar issues.

If the permit holder operates multiple operations, Licensing staff may consider the criteria listed above for each operation the permit holder operates when determining the operation’s eligibility to participate in a plan of action.

In determining whether a plan of action is the most appropriate enforcement action for an operation, Licensing staff should consult [Appendix 7000-1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000.asp#LPPH_apx7000): Factors to Consider for Enforcement Actions.

DFPS Rule, 40 TAC §§[745.8605](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=8605); [745.8607](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=8607); and [745.8633](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=8633)

#### 7352 Staffing and Initiating a Plan of Action

LPPH DRAFT 9422-CCL (NEW)

Procedure:

The inspector must discuss the recommendation to initiate a plan of action with the supervisor and obtain supervisory approval before recommending a plan of action to the operation. The supervisor documents the approval in a Chronology in CLASS.

After receiving approval from the supervisor, the inspector:

• prepares the operation’s compliance history report and completes Section I of [Form 7277](http://www.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=7277.doc) Plan of Action; and

• attaches Form 7277 to the operation’s compliance history.

The inspector then contacts the operation, in person or via telephone, to:

a. discuss the identified compliance issues with the operation;

b. explain the purpose of the plan of action and the process for developing the plan;

c. explain the benefits of participating in a plan of action; and

d. ask the operation if they agree to complete a plan of action.

During the meeting, Licensing staff provide the operation a copy of [Form 7277](http://intranet/Application/Forms/showFile.aspx?Name=J-800-7277.pdf) Plan of Action with the compliance history report attached. If the meeting is conducted by phone, the inspector ensures that the permit holder receives a copy of the plan before the phone conference.

The inspector documents a summary of the conversation with the operation in a CLASS *Chronology.*

##### 7352.1 If the Operation Agrees to Participate in a Plan of Action

LPPH DRAFT 9422-CCL (NEW)

Procedure

If the operation agrees to complete a plan of action, the inspector takes the following actions:

• explains to the operation’s permit holder, director, or administrator that they must complete Section II of Form 7277 and return to Licensing within 10 days of receipt; and

• explains to the operation’s permit holder, director, or administrator that licensing staff and the operation will discuss and must agree to action items the operation documents in Section II of Form 7277 before the plan can be implemented.

##### 7352.2 If the Operation Does Not Agree to Participate in a Plan of Action

LPPH DRAFT 9422-CCL (NEW)

Procedure

If the operation does not agree to complete a plan of action, the inspector:

• discusses with the Licensing supervisor, program administrator, or district director whether Licensing should impose a more restrictive enforcement action; and

• notifies the operation, in writing on DFPS letterhead, of the outcome of the discussion.

#### 7353 Meeting With an Operation To Review a Plan of Action

LPPH DRAFT 9422-CCL (NEW)

Policy

Licensing staff schedule a meeting, in person or via telephone, with the operation’s permit holder, designee, director or administrator to:

• review Section II of Form 7277; and

• ensure that the operation’s proposed plan addresses the deficiencies and will mitigate risk to children.

The meeting must take place within 10 days of receiving the completed Form 7277 from the operation. The inspector and supervisor must review the plan submitted by the operation before the meeting.

Procedure

During the plan of action meeting, Licensing staff:

a. review the operation’s compliance history report and discuss areas of concern with the operation;

b. review the operation’s plan to ensure the action items:

• address the areas of concern identified in the operation’s compliance history;

• reduce or eliminate the recurrence of deficiencies; and

• mitigate risk to children caused by the deficiencies;

c. explain to the provider how Licensing follows up on the implementation of the plan; and

d. discuss the date the operation will implement the plan (the start date) and the date the plan will end (see 7357 Plan of Action Timeframes).

In the event the action items the operation outlined in the plan do not mitigate risk, the inspector:

• explains to the operation how the plan fails to reduce risk and correct deficiencies; and

• works with the operation to develop new action items that reduce risk and address the deficiencies.

##### 7353.1 When Licensing and Operation Agree on a Proposed Plan of Action

LPPH DRAFT 9422-CCL (NEW)

Procedure

Once Licensing and the operation have agreed to the plan of action, the permit holder or designee and the Licensing inspector and supervisor review and sign the completed Form 7277 Plan of Action.

Licensing staff places a hard copy of the plan of action in the case file.

At least 15 days prior to the start date of the plan, Licensing staff sends the permit holder notification that includes the plan’s start date, along with a signed copy of the plan.

Licensing staff documents the plan in CLASS (See 7354 Documenting the Plan of Action in CLASS).

##### 7353.2 When Licensing and Operation Cannot Agree on a Proposed Plan of Action

LPPH DRAFT 9422-CCL (NEW)

Procedure

If Licensing staff and the operation cannot agree on the proposed plan of action, the inspector consults with the supervisor, and, if needed, the program administrator and/or director, to determine whether Licensing should:

a. implement the plan as written by the operation;

b. collaborate further with the operation; or

c. impose a more restrictive enforcement action.

Licensing staff documents the consultation and resulting recommendations in a CLASS *Chronology*.

DFPS Rules, 40 TAC §[745.8631(1)](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8631), §[745.8639](http://texreg.sos.state.tx.us/public/readtac$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=8639)

#### 7354 Documenting the Plan of Action in CLASS

LPPH DRAFT 9422-CCL (NEW)

Licensing staff document the plan of action in the CLASS system *Provider Plan of Action List* located under the *Monitoring* tab as follows:

| What to Document | When to Document | CLASS Field(s) |
| --- | --- | --- |
| Planned Start Date | Before plan of action begins | *Begin Date* |
| Planned Completion Date | Before plan of action begins | *End Date* (must be 6 months from the *Start Date*) |
| Reason for action | Before plan of action begins | *Comments* |
| List of deficiencies that are the basis for recommending the plan | Before plan of action begins | • *Basis for Plan of Action - Investigation*  *• Basis for Plan of Action - Inspection*  *• Basis for Plan of Action - Assessment* |
| Operation’s action items | Before plan of action begins | *Plan Summary* |
| Whether implementation of the plan was successful | After plan of action ends | *Status* dropdown |

#### 7355 Starting a Plan of Action

LPPH DRAFT 9422-CCL (NEW)

Policy

A plan of action starts 15 days from the date the operation was notified, in writing, of the plan unless the operation requests, in writing, to begin the plan earlier.

Procedure

If an operation requests to begin the plan of action early, the inspector:

• documents the revised start date in the *Begin Date* field in the *Provider Plan of Action List* in CLASS; and

• updates the end date in the *End Date* field in the *Provider Plan of Action List* in CLASS.

See 7354 Documenting a Plan of Action in CLASS

#### 7356 Inspecting an Operation During a Plan of Action

LPPH DRAFT 9422-CCL (NEW)

Policy

During a plan of action, Licensing staff conduct at least two unannounced inspections while children are in care to determine whether the operation has come into and maintained compliance with minimum standards, administrative rules and statutes.

Licensing staff may conduct additional inspections based on the compliance of the operation and risk to children determined during the required inspections.

DFPS Rule, 40 TAC §[745.8631(1)](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=8631)

Procedure

The inspector must conduct the inspections at appropriate intervals in order to be able to:

• evaluate the operation’s progress in implementing the plan; and

• determine whether the operation successfully completed the plan or a more restrictive action may be needed.

During each monitoring inspection, the inspector:

a. evaluates an operation’s compliance with the sections of the minimum standards associated with the plan of action;

b. documents that the plan of action was evaluated during the inspection in the *Narrative* field on CLASS Form 2936;

c. provides technical assistance in the areas where the operation is deficient; and

d. completes all other tasks required during a monitoring inspection (See [4126](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4126) Monitoring Inspections).

The inspector may evaluate whether the operation is following the plan of action, but only cites a deficiency if the operation violates a minimum standard, administrative rule, or statute. If the operation is still deficient in the areas identified in the plan, the inspector reviews the specific action items in the plan related to the deficiencies with the permit holder or designee at the time of the inspection.

#### 7357 Ending a Plan of Action

##### 7357.1 Staffing Before a Plan of Action Ends

LPPH DRAFT 9422-CCL (NEW)

Policy

Before a plan of action ends, the Licensing inspector meets with the Licensing supervisor at least once to review the operation’s compliance with minimum standards, administrative rules, and statutes. The inspector may conduct additional staffings with the supervisor as needed based on the operation’s progress and overall compliance.

Procedure

During each staffing, the Licensing inspector and supervisor review the operation’s progress on the plan of action and overall compliance with minimum standards. They also discuss whether:

a. the plan remains appropriate;

b. the plan should end early;

c. additional inspections are needed; or

d. a more restrictive enforcement action would be more appropriate.

Before ending the plan, the Licensing inspector and supervisor must discuss whether the plan of action has been successful.

The staffing and any recommendations are documented as a *Chronology* in CLASS.

##### 7357.2 Plan of Action Timeframes and Ending a Plan of Action Early

LPPH DRAFT 9422-CCL (NEW)

Policy

A plan of action lasts six months. Licensing may not extend a plan of action, but may end a plan of action early if Licensing determines that:

• the operation has reduced risk and come into and maintained compliance with minimum standards, administrative rules, and statutes; or

• the operation’s compliance has worsened and a more restrictive enforcement action is necessary.

DFPS Rules, 40 TAC §[745.8611](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8611), [745.8643](http://texreg.sos.state.tx.us/public/readtac$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=8643)

See 7357.3 Ending a Plan of Action When Compliance Has Been Established and Maintained and 7357.4 Modifying or Ending a Plan of Action When Compliance Has Not Been Established

##### 7357.3 Ending a Plan of Action When Compliance Has Been Established and Maintained

LPPH DRAFT 9422-CCL (NEW)

Procedure

When the operation has come into and maintained compliance with all minimum standards, administrative rules, and statutes, the inspector sends a letter on DFPS letterhead to the operation stating that:

a. compliance with the minimum standards, administrative rules, and law has been established;

b. the plan of action has ended; and

c. compliance with the minimum standards, administrative rules, the law, and any restrictions or conditions on the license or registration must be maintained.

The inspector also changes the Status from *In Progress* to *Successful* on the *Plan of Action Details* page in CLASS.

##### 7357.4 Modifying or Ending a Plan of Action When Compliance Has Not Been Established

LPPH DRAFT 9422-CCL (NEW)

Policy

If the operation’s compliance with minimum standards, administrative rules, and statute does not improve sufficiently to reduce risk at the operation as a result of the plan of action or the operation’s compliance worsens, the inspector may:

• recommend additional action items, modify action items, and/or increase inspections; or

• end the plan of action and impose a more restrictive enforcement action.

DFPS Rules, 40 TAC §[745.8643](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=8643)

Procedure

If the operation has not met compliance with minimum standards, administrative rules, and statute, Licensing staff:

• reevaluates the plan to determine the appropriateness of its terms and:

• recommends an amendment to the plan’s action items and/or increased inspections if the term of the plan of action is not expiring within the next 45 days; or

• ends the plan and imposes a more serious enforcement action; and

• notifies the operation, in writing, that the operation has not met compliance and Licensing is proceeding with the decided upon action.

When the plan ends, the inspector also completes the fields below on the *Plan of Action Details* page in CLASS as follows:

• Status: Change from *In Progress* to *Not Successful*.

• CLASS Chronology: Document an explanation for ending the plan and the date the plan actually ended.

## 7400 Corrective Action

LPPH ~~December 2009~~ DRAFT 9422-CCL (TTL, REV)

Policy

Corrective actions are enforcement actions Licensing initiates to ensure the safety of children in care of an operation that refuses to or is not eligible to participate in a voluntary plan of action, and adverse action is not necessary to mitigate risk. Corrective actions include the following:

• evaluation; and

• probation

In deciding which type of corrective action to recommend, Licensing staff:

• consider the operation’s risk factors; and

• determine the operation’s eligibility to participate in each type of corrective action.

The timeframe for evaluation is six months, and the timeframe for probation is twelve months.

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

DFPS Rules, 40 TAC §§[745.8603](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8603); [745.8607](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8607); [745.8611](http://texreg.sos.state.tx.us/public/readtac$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=8611); [745.8633(c)](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8633) and [745.8635](http://texreg.sos.state.tx.us/public/readtac$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=8635)

### 7410 Criteria for Imposing Corrective Action

Publication note: This revision changes the title of 7410, an undated introductory heading.

#### 7411 Criteria for Imposing Evaluation

LPPH ~~December 2009~~ DRAFT 9422-CCL (TTL, REV)

Licensing imposes evaluation on an operation if a circumstance exists that is described in 7110 Circumstances That May Call for Enforcement Action, and the operation meets one of the following criteria:

a. the operation refuses to participate in a plan of action;

b. the operation failed to resolve its deficiencies associated with a plan of action;

c. the operation has not completed evaluation for a similar pattern of deficiencies within the past 12 months; or

d. a more restrictive enforcement action is not necessary to reduce risk.

See [Appendix 7000-1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000.asp#LPPH_apx7000): Factors to Consider for Enforcement Actions

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

DFPS Rules, 40 TAC §§[745.8601](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8601); [745.8605](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8605); [745.8607](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8607); and [745.8635](http://texreg.sos.state.tx.us/public/readtac$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=8635)

#### 7412 Criteria for Imposing Probation

LPPH ~~December 2009~~ DRAFT 9422-CCL (TTL, REV)

Licensing imposes probation on an operation when determining that the operation has repeatedly demonstrated the inability to make necessary corrections to address risk. Specifically, Licensing may impose probation on an operation if a circumstance described in 7110 Circumstances That May Call for Enforcement Action exists and upon determining that:

a. the operation does not qualify for a less restrictive enforcement action;

b. the operation has not demonstrated the ability to make the necessary changes to address risk, but expresses a willingness to comply and make corrections;

c. the operation will be able to mitigate risk by complying with the conditions identified in the plan in addition to minimum standards; and

d. a more restrictive enforcement action is not necessary to reduce risk.

See [Appendix 7000-1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000.asp#LPPH_apx7000): Factors to Consider for Enforcement Actions

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

DFPS Rules, 40 TAC §[§745.8601](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8601); [745.8605;](http://texreg.sos.state.tx.us/public/readtac$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=8605) [745.8607](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8607); and [745.8637](http://texreg.sos.state.tx.us/public/readtac$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=8637)

### 7420 Staffing a Corrective Action

LPPH ~~August 2012~~ DRAFT 9422-CCL (NUM, TTL, REV — this is 7431 in the current handbook)

Policy

The inspector must obtain supervisory approval before imposing a corrective action with the operation.

Procedure

Following a deficiency or other triggering event, the inspector discusses the reason for recommending an evaluation or probation with the supervisor or, if necessary, the program administrator or district director,

Upon receiving supervisory approval to impose corrective action, the inspector documents the plan and conditions in CLASS.

#### 7421 Documenting the Corrective Action and Creating the Corrective Action Letter in CLASS

LPPH DRAFT 9422-CCL (NEW)

Procedure

Before Licensing staff meet with the operation, Licensing staff document the corrective action on the *Provider Corrective Action Plan* page as follows:

| What to Document | CLASS Field(s) |
| --- | --- |
| Planned Start Date | *Planned Begin Date* |
| Planned Completion Date | *Planned End Date* (must be 6 months from the planned start date for evaluation and 12 months from the planned start date for probation) |
| Planned method of follow-up, including inspection frequency | *Plan for Follow Up Narrative* |
| List of deficiencies that are the basis for recommending the plan | *• Basis for Corrective Action - Investigation*  *• Basis for Corrective Action - Inspection*  *• Basis for Corrective Action - Assessment* |
| Conditions | *Condition Select* |

See 7422 Meeting With an Operation About a Corrective Action

##### 7421.1 Considering the Conditions for a Corrective Action

LPPH DRAFT 9422-CCL (NEW)

Policy

Evaluation and probation involve imposing conditions that go beyond minimum standards and basic permit requirements to help the operation improve compliance and reduce risk at the operation.

The inspector, in consultation with the supervisor, develops conditions that:

• directly relate to the specific deficiencies which resulted in the action; and

• are designed to correct the deficiencies, reduce risk to children, and ensure that the operation can come into and maintain compliance with the minimum standards, administrative rules, and statutes.

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

DFPS Rules, 40 TAC §§[745.8631(2), (3)](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8631); [745.8641](http://texreg.sos.state.tx.us/public/readtac$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=8641) and [745.8643](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=8643)

Procedure

The inspector discusses the conditions with the operation at the meeting to discuss the corrective action. See 7422 Meeting With an Operation About a Corrective Action.

When an operation is on corrective action, Licensing may amend conditions if it is determined the conditions do not protect children or improve the status of the compliance. See 7431 Modifying or Ending a Corrective Action When Compliance Has Not Been Established.

Licensing staff may add a condition to the permit for the duration of the corrective action if the operation’s compliance history supports that such a condition is warranted. Licensing staff may not add permanent conditions or restrictions to the permit as part of the corrective action. If Licensing wants to impose permanent conditions or restrictions on the permit, Licensing may impose an adverse amendment.

See:

[3810](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_3400.asp#LPPH_3810) Circumstances That May Require Amending the Permit

7622 Criteria for Imposing an Adverse Amendment

##### 7421.2 Documenting Supervisory Approval of a Corrective Action

LPPH DRAFT 9422-CCL (NEW)

Procedure

Once Licensing staff have determined the conditions for the corrective action, the Licensing supervisor must review and approve the plan and conditions. The supervisor must document this approval by completing the following fields in the *Supervisory Decision* and *Provider Acknowledgement* box on the *Provider Corrective Action Plan* page in CLASS:

• *Supervisory Decision Date*;

• *Supervisory Decision*; and

• *Reason for Decision*.

##### 7421.3 Creating the Corrective Action Letter

LPPH DRAFT 9422-CCL (NEW)

Procedure

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

In the letter, Licensing staff specify:

a. the basis for the corrective action;

b. information about the corrective action;

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

d. the conditions imposed to correct them.

#### 7422 Meeting With an Operation About a Corrective Action

LPPH ~~August 2012~~ DRAFT 9422-CCL (NUM, TTL, REV — this is currently 7434)

Policy

Licensing staff schedule a meeting, in person or via telephone, with the operation’s permit holder, designee, director or administrator to:

a. notify the operation about the corrective action;

b. explain the reasons for the corrective action;

c. discuss the conditions being imposed; and

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

The meeting must take place at least 15 days before the evaluation or probation period is scheduled to begin, to ensure that the operation has opportunity to request an administrative review.

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

DFPS Rules, 40 TAC [§745.8609](http://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=8609)

Procedure

During the meeting, Licensing staff provide the operation a copy of the Corrective Action Letter. If the meeting is conducted by phone, the inspector ensures that the permit holder receives copy of the plan before the phone conference.

##### 7422.1 Required Participants When Meeting With an Operation About a Corrective Action

LPPH ~~August 2012~~ DRAFT 9422-CCL (NUM, TTL, REV — this is currently 7434.1)

Procedure

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

Directors and program administrators participate in the meeting if circumstances exist to warrant their involvement.

##### 7422.2 Topics Covered When Meeting With an Operation About a Corrective Action

LPPH ~~August 2012~~ DRAFT 9422-CCL (NUM, TTL, REV — this is currently 7434.2)

Procedure

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

a. the reason for the evaluation or probation period, including the operation’s history of compliance with statutes, administrative rules, minimum standards and restrictions or conditions on the permit;

b. the conditions of evaluation or probation that the operation must meet to comply with the action;

c. how Licensing follows up on the implementation of the action;

d. projected begin and end dates of the action; and

e. the possible consequences, including adverse action, if the correction is not made, the violation is repeated, and/or the conditions are not met.

DFPS Rules, 40 TAC [§§745.8631](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8631); [745.8639](http://texreg.sos.state.tx.us/public/readtac$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=8639) and [745.8643](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=8643)

##### 7422.3 Finalizing the Corrective Action Letter

LPPH ~~August 2012~~ DRAFT 9422-CCL (NUM, TTL, REV — this is currently 7434.3

Procedure

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

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

Licensing staff documents the date the Corrective Action Letter (CLASS Form 2885) was delivered or mailed to the operation in CLASS in the *Acknowledgement* *Date* field on the *Provider Corrective Action Plan* page.

##### 7422.4 Documenting the Corrective Action Plan Meeting

LPPH DRAFT 9422-CCL (NEW)

Procedure

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

• The meeting’s attendees;

• If conditions were amended as a result of the meeting; and

• Any technical assistance provided.

#### 7423 Requesting or Waiving the Right to an Administrative Review of a Corrective Action

LPPH ~~August 2012~~ DRAFT 9422-CCL (NUM, TTL, REV — this is currently 7435)

Policy

If an operation disagrees with the action or any of the conditions imposed as a part of the evaluation or probation, the operation may request an administrative review within 15 days of receiving the finalized Corrective Action Letter.

The operation waives the right to request an administrative review of the evaluation or probation if:

• The operation does not submit a request for an administrative review within the 15 days; or

• The operation waives the administrative review, in writing, within the 15 days.

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

#### 7424 Starting a Corrective Action

LPPH DRAFT 9422-CCL (NEW)

Policy

A corrective action does not start until:

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

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

If the operation waives the administrative review, in writing, before the 15 days to request the administrative review expire, Licensing may begin the action sooner the planned start date.

Procedure

After the administrative review for the corrective action is waived or upheld, the inspector:

• enters the *Actual Begin Date* field on the *Provider Corrective Action* page in the CLASS system; and

• notifies the operation of the *Actual Begin Date*.

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

#### 7425 Inspecting an Operation During a Corrective Action

LPPH ~~June 2015~~ DRAFT 9422-CCL (NUM, TTL, REV — this is currently 7436)

Procedure

During an evaluation or probation, Licensing staff conduct a monitoring inspection at all of the following times, unless there is good cause not to inspect within these times (such as when Licensing is conducting an investigation):

• At least once within 21 days after the corrective action period begins; and

• At least once per month during the duration of the corrective actionperiod.

If there is good cause not to inspect within these times, the inspector requests approval from the supervisor and documents the reason for the variation in a *Chronology* in CLASS.

During each monitoring inspection, the inspector:

a. evaluates:

• an operation’s compliance with the conditions imposed by the corrective action plan, and

• the section (or sections) of the minimum standards that relate to those conditions.

One additional subchapter may be evaluated as needed to ensure overall compliance with the minimum standards;

b. documents in the *Narrative* field on CLASS From 2936 that each condition of the corrective action was evaluated during the inspection; and

c. completes all other tasks required during a monitoring inspection (See [4126](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4126) Monitoring Inspections).

If the operation is in violation of any condition or minimum standard, administrative rule, or statute associated with the action, the inspector:

• cites the operation;

• provides technical assistance in the area where the operation is deficient; and

• reviews the conditions related to the deficiencies with the permit holder or designee at the time of the inspection.

DFPS Rules, 40 TAC [§745.8631](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=8631)

See [4152](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4000.asp#LPPH_4152) Reviewing Restrictions, Conditions, Waivers, and Variances.

#### 7426 Conducting Surveillance During Corrective Action

LPPH ~~June 2015~~ DRAFT 9422-CCL (NUM, TTL)

Policy

An inspector or supervisor may determine that surveillance is necessary to evaluate whether a program or caregiver is complying with minimum standards or conditions outlined in the corrective action plan. Valid reasons for surveillance include, but are not limited to determining whether an operation is:

a. complying with transportation requirements;

b. providing adequate supervision during outdoor activities; or

c. providing care to more children than the permit allows.

Procedure

An inspector must receive supervisory approval to conduct surveillance. Upon receiving the necessary approval, the inspector may conduct surveillance at the location of the operation or at other locations where children in care are transported by the operation. The inspector should take photographs or video recordings, as necessary, during the course of the surveillance to support violations or a lack of violations. See [1400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_1400.asp#LPPH_1400) State-Issued Equipment, Photographs, and Video.

All decisions regarding surveillance and all information obtained from conducting surveillance must be documented as a *Chronology* in CLASS.

#### 7427 Staffings During Corrective Action

LPPH DRAFT 9422-CCL (NEW)

Policy

During corrective action, the Licensing inspector meets with the Licensing supervisor to review the operation’s compliance with minimum standards, administrative rules, and statutes, and the conditions of the corrective action. These meetings take place at least:

• twice if the corrective action is evaluation; and

• four times if the corrective action is probation.

Procedure

During each staffing, the Licensing inspector and supervisor:

• review the operation’s progress on the corrective action, including the operation’s overall compliance with the minimum standards, administrative rules, and statutes, and the conditions of the corrective action;

• discuss whether the corrective action plan and conditions remain appropriate, including whether additional inspections are needed or a more serious enforcement action would be more appropriate; and

• whether the corrective action has been successful.

The staffing and any recommendations are documented as a *Corrective/Adverse Action Chronology* in CLASS.

#### 7428 Corrective Action Timeframes

LPPH DRAFT 9422-CCL (NEW)

Policy

An evaluation lasts six months and probation lasts twelve months.

DFPS Rules, 40 TAC [§§745.8611](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=8611)

#### 7429 Ending Corrective Action

LPPH DRAFT 9422-CCL (NEW)

Policy

Licensing may not extend a corrective action, but may end a corrective action early if Licensing determines:

• that the operation has reduced risk and come into and maintained compliance with minimum standards, administrative rules, and statutes; or

• the operation’s compliance does not improve and a more restrictive enforcement action is necessary.

See*:*

7429.1 Ending a Corrective Action When Compliance Has Been Established

7429.2 Modifying or Ending a Corrective Action When Compliance Has Not Been Established

DFPS Rules, 40 TAC §§[745.8611(b)](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8611) and [745.8643](http://texreg.sos.state.tx.us/public/readtac$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=8643)

##### 7429.1 Ending a Corrective Action When Compliance Has Been Established

LPPH ~~August 2012~~ DRAFT 9422-CCL (NUM, TTL, REV — currently 7439.1)

Procedure

If the operation has come into and maintained compliance with minimum standards associated with the corrective action and all other minimum standards, administrative rules, and statutes, the inspector sends a letter on DFPS letterhead to the operation stating that:

• compliance with the minimum standard rules, the law, and conditions has been established;

• the corrective action period has ended; and

• compliance with the minimum standards, administrative rules, and statutes, and any restrictions or conditions on the permit must be maintained.

On the *Provider Corrective Action Plan* page in CLASS the inspector:

• selects the appropriate selection from the *Result of Corrective Action* dropdown menu; and

• enters the end date in the *Actual End Date* field.

Licensing staff follow this process whether the plan ends early or on time.

##### 7429.2 Modifying or Ending a Corrective Action When Compliance Has Not Been Established

LPPH ~~August 2012~~ DRAFT 9422-CCL (NUM, TTL, REV — currently 7439.2)

Procedure

If the operation’s compliance with minimum standards, administrative rules, the law, and conditions of the corrective action plan have NOT improved sufficiently to reduce risk at the operation as a result of the corrective action, Licensing staff:

a. reevaluates the plan to determine the appropriateness of the terms and conditions and:

• recommends an amendment to the conditions and/or increased inspections if the term of the corrective action is not expiring within the next 45 days; or

• imposes a more restrictive enforcement action, including adverse action; and

b. notifies the operation, in writing, that compliance has not been met and Licensing is proceeding with the decided upon action.

If ending the plan, the inspector also completes the following fields on the *Provider Corrective Action Plan* page in CLASS as shown below. The inspector:

• selects the appropriate selection from the *Result of Corrective Action* dropdown menu; and

• enters the end date in the *Actual End Date* field.

No changes to 7500–7512

### 7520 Assessing the Need for an Administrative Penalty

LPPH ~~August 2015~~ DRAFT 9422-CCL

Policy

To determine whether an administrative penalty should be recommended, staff consider the following:

a. whether corrective action is more appropriate (see [7400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7000.asp#LPPH_7400) Corrective Action);

b. whether the operation or controlling person has made any effort to come into compliance;

c. whether an operation has been cited for the same violation within the past six months;

d. whether it has been documented that the operation has been advised in writing that another violation of the high risk minimum standard or rule previously cited could result in an administrative penalty; and

e. the level of risk posed to children in care because of the violation.

#### 7521 A Single High Risk Violation

LPPH ~~August 2015~~ DRAFT 9422-CCL

Policy

Licensing staff recommend an administrative penalty when an operation or controlling person has a single violation of certain high risk statutes, minimum standards, or administrative rules for the following requirements:

a. knowingly allowing a person to be present in the operation before receiving the results of the person’s background check;

b. knowingly allowing a person to be present in the operation after receiving the results of the person’s background check, if the results contain criminal history or central registry findings that preclude the person from being present in the operation;

c. violating a condition or restriction placed by Licensing on a person’s presence at the operation as part of a pending or approved risk evaluation; or

d. other high risk violations identified in:

[*Protocol for Citing and Recommending Administrative Penalties for Single High Risk Deficiencies*](http://intranet.dfps.txnet.state.tx.us/CCL/Policy_and_Procedures_Plus/documents/Protocol_Single_High_Risk_Violations.pdf); and

*[Protocol for Providing Technical Assistance for Statute and Minimum Standard Deficiencies Associated With Administrative Penalties](http://intranet.dfps.txnet.state.tx.us/CCL/Policy_and_Procedures_Plus/documents/Protocol_TA_Admin_Penalty_Statute_MS.pdf)*

DFPS Rules, 40 TAC §§[745.626](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=626), [745.651](http://texreg.sos.state.tx.us/public/readtac$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=651), [745.656](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=656), [745.657](http://texreg.sos.state.tx.us/public/readtac$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=657), [745.693](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=693), [745.701](http://texreg.sos.state.tx.us/public/readtac$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=701), [745.8713](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=8713)

Publication note: Delete 7521.1. No changes to 7522–7560.

#### 7561 When Administrative Penalties Remain Unpaid

LPPH ~~August 2015~~ DRAFT 9422-CCL

Policy

If the operation or controlling person does not pay the penalty amount as ordered by the due date, Licensing staff may:

• impose another enforcement action against the operation or controlling person; or

• refer the matter to the Office of Attorney General for collection.

DFPS Rules, 40 TAC [§745.8605](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=8605)

Publication note: No changes to 7561.1–7561.3

## 7600 Adverse Actions

LPPH ~~December 2015~~ DRAFT 9422-CCL

Policy

Licensing may deny, suspend, revoke, or impose conditions on the permit (adverse amendment) of an operation that does not comply with the law, administrative rules, minimum standards, or the specific terms of the permit.

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

DFPS Rules, 40 TAC [§745.8649](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=8649) §[745.8875](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=8875)

Pending the appeal of a decision to deny the permit, an operation may not operate.

Pending the appeal of the decision to revoke the operation’s permit, an operation may continue to operate, unless Licensing determines health or safety concerns exist that requires the operation to stop operating. In this case, the operation may only continue to operate pending appeal of the revocation if a judge grants injunctive relief allowing the operation to remain open.

The inspector or supervisor consults with a Licensing attorney before notifying the permit holder of an adverse action.

DFPS Rules, 40 TAC [§§745.8655](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=8655) and [745.8609](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=8609)

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

### 7610 Defining Adverse Action

LPPH ~~December 2009~~ DRAFT 9422-CCL

Policy

Adverse action is taken when deficiencies pose a risk that endangers the health and safety of children, or there are indications of a continued failure to comply with the rules or law.

An adverse action is one of the following:

a. Denial of an application (during application status)

b. Denial of an application for issuance of a permit (during initial status)

c. Denial of a request for amendment of a license, certificate, or registration

d. Adverse amendment of the permit with conditions

e. Involuntary suspension (this type of suspension is not the same as an automatic suspension that takes place when there is a failure to pay an annual fee)

f. Revocation of an initial or non-expiring permit

DFPS Rules, 40 TAC [§745.8649](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=8649)

### 7620 Criteria for Taking Adverse Action

LPPH ~~September 2012~~ DRAFT 9422-CCL

Policy

Licensing imposes adverse action upon determining that the operation not operate or must cease operating or that a permanent restriction or condition to the operation’s permit is necessary because of an issue described in 7110 Circumstances That May Call for Enforcement Action.

#### 7621 Criteria for Imposing a Denial

LPPH DRAFT 9422-CCL (NEW)

Policy

Licensing may deny an applicant a permit for an issue identified in 7110 Circumstances That May Call for Enforcement Action upon determining that:

a. a background check result makes an applicant ineligible for a permit, because either the result is ineligible for a risk evaluation or the Central Background Check Unit will not approve a risk evaluation;

b. the operation does not demonstrate the ability to comply with minimum standards and other applicable laws during the initial permit period, if applicable;

c. the results of a public hearing make an applicant ineligible for a permit;

d. the operation presents an immediate threat to the health or safety of children; or

e. the applicant is otherwise ineligible for a permit because of an issue described in 7110 Circumstances That May Call for Enforcement Action.

DFPS Rules, 40 TAC §§[745.8605](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8605); [745.8650](http://texreg.sos.state.tx.us/public/readtac$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=8650)

See:

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

3713 Compliance History Indicates Inability to Meet Minimum Standard Rules

[5355.31](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5355_31) When to Deny or Revoke a Permit Based on Criminal History

7110 Circumstances that May Call for Enforcement Action

[Appendix 7000-1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000.asp#LPPH_apx7000_1): Factors to Consider for Enforcement Actions.

#### 7622 Criteria for Imposing an Adverse Amendment

LPPH DRAFT 9422-CCL (NEW)

Policy

Licensing may impose an adverse amendment on an operation if a circumstance described in 7110 Circumstances That May Call for Enforcement Action exists, and Licensing determines the following criteria are met:

a. an amendment on the permit will mitigate any risks;

b. the amendment is the most effective enforcement action for addressing risk at the operation; and

c. the operation is capable of following the restrictions of the amendment.

DFPS Rules, 40 TAC §§[745.8605](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8605); [745.8651](http://texreg.sos.state.tx.us/public/readtac$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=8651)

#### 7623 Criteria for Imposing an Involuntary Suspension

LPPH DRAFT 9422-CCL (NEW)

Policy

Licensing may impose an involuntary suspension on an operation if a circumstance described in 7110 Circumstances That May Call for Enforcement Action exists, and upon determining that:

a. the operation will pose a danger or threat of danger to the health or safety of children in the operation’s care until the issue is resolved;

b. the operation cannot correct the issue while children are in care, but can do so during a specific period of time;

c. the operation is capable of making the necessary corrections while the permit is suspended; and

d. there are no additional concerns about the operation’s compliance history that would make revocation a more appropriate enforcement action for the health or safety of children.

DFPS Rules, 40 TAC §§[745.8605](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8605); [745.8652](http://texreg.sos.state.tx.us/public/readtac$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=8652)

#### 7624 Criteria for Imposing a Revocation

LPPH DRAFT 9422-CCL (NEW)

Policy

Licensing may revoke an operation’s permit if an issue described in 7110 Circumstances That May Call for Enforcement Actionexists, and upon determining that:

a. the operation is ineligible for corrective action;

b. Licensing cannot address the risk at the operation by taking corrective action or another type of adverse action;

c. A background check result or a finding of abuse or neglect makes the permit holder ineligible for a permit, either because the result is ineligible for a risk evaluation or the Central Background Check Unit informs will not approve a risk evaluation; or

d. Revocation is otherwise necessary to address the issue described in 7110 Circumstances That May Call for Enforcement Action.

DFPS Rules, 40 TAC §§[745.8605](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8605); [745.8654](http://texreg.sos.state.tx.us/public/readtac$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=8654)

### 7630 Taking Adverse Action

LPPH ~~September 2012~~ DRAFT 9422-CCL

Procedure

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

Determine the Appropriate Adverse Action

Licensing staff:

• uses Appendix 7000-1 as an aid in determining which action to recommend (see [7620](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7620) Criteria for Taking Adverse Action);

• discusses the recommendation of an adverse action and with the supervisor; and

• makes the recommendation to the program administrator or district director.

Notify the Permit Holder or Applicant About the Action

Licensing staff:

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

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

See:

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

[7631](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7631) Notice of Intent to Deny, Revoke, or Suspend

[7632](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7632) Administrative Review for Adverse Action

Notify Controlling Persons About the Intent to Designate

If the action being taken is a revocation, Licensing staff:

• determines which controlling persons to designate; and

• notifies the controlling person about the intent to designate.

See [7770](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7770) Administrative Review and Due Process Hearing for a Designated Controlling Person.

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

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

If the permit holder or applicant appeals the Licensing decision, Licensing staff notifies him or her about the final decision to deny, revoke, suspend, or amend the permit after the opportunity to appeal has been exhausted. See [7633](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7633) Notice of Decision to Deny, Revoke, or Suspend an Application or Permit.

Documentation

Licensing staff documents all adverse action in the CLASS system.

Licensing staff generates all adverse action letters from CLASS.

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

Form 2880 Intent to Impose Adverse Action Letter

Form 2878 Decision to Impose Adverse Action Letter

Form 2895 Final Notice of Adverse Action Letter

Publication note: No changes to 7631–7631.2

###### 7631.21 Requirements if the Action Taken is Denial

LPPH ~~December 2015~~ DRAFT 9422-CCL

If the action taken is denial, Licensing staff:

• leaves the checkbox stating that DFPS has determined the operation poses a risk to the health and safety of children unchecked. This checkbox should only be used when the action taken is revocation or suspension; and

• includes a statement that the operation cannot continue to care for children pending the outcome of due process in the *Enter any additional information below* text box on the CLASS Form 2880 Intent to Impose Adverse Action letter.

Publication note: No changes to 7631.22–7631.27

##### 7631.3 Authorizing and Delivering the Intent to Impose Adverse Action Letter

LPPH ~~December 2015~~ DRAFT 9422-CCL

The notification letter CLASS Form 2880 Intent to Impose Adverse Action, must be signed by the district director, manager, or designee.

Licensing staff:

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

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

Licensing staff sends a copy of the letter to the:

a. district director;

b. Licensing attorney;

c. supervisor; and

d. residential contract manager (if applicable).

Day care licensing staff also notify:

• the local Child Care Services Program; and

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

DFPS Rules, 40 TAC [§745.8657](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=8657)

Publication note: No changes to 7631.31–7633.16.

##### 7633.2 Notifying DFPS and Other State Agencies

LPPH ~~December 2015~~ DRAFT 9422-CCL

Procedure

The inspector sends copies of the decision to suspend, revoke, or deny letter to the appropriate Licensing attorney, district director, supervisor, Child Care Services Program staff, and Child and Adult Food Care Program (CACFP) staff, if applicable.

The residential care inspector must also notify the residential contract manager.

#### 7634 Inspecting During the Suspension, Revocation, or Denial Process

LPPH ~~December 2009~~ DRAFT 9422-CCL

Policy

Licensing staff consults with district director, director of day care field operations or director of residential child care field operations, as appropriate, and the Licensing attorney to determine a plan for inspecting during the revocation, suspension, or denial process.

The purpose of inspecting during this process is to ensure the safety of children. Because the operation still has children in care during this time, Licensing continues to have monitoring responsibility.

Procedure

Inspection procedures are described in [7731](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7731) Regulation During Appeal Process.

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

LPPH ~~September 2012~~ DRAFT 9422-CCL

Policy

The district director notifies the applicant or permit holder that the decision to revoke, suspend, or deny the permit is final when:

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

• the decision is upheld at the due process.

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

DFPS Rules, 40 TAC [§745.8659](http://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=8659)

Procedure

The district director or designee:

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

• updates the due process fields in CLASS to ensure that the revocation/suspension is reflected on the DFPS website.

See also:

[7632](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7632) Administrative Review for Adverse Action

[7711.4](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7711_4) Waiving the Right to Administrative Review

[7716.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7716_1) Documenting the Outcome of an Administrative Review in CLASS

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

LPPH ~~September 2012~~ DRAFT 9422-CCL

Procedure

When an inspector sends a final notice of adverse action to a permit holder or applicant, as required in [7635](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7635) Sending an Operation Final Notice of Suspension, Revocation, or Denial, the inspector includes the following statements in the notice.

Statement 1: Decision Is Final

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

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

Statement 2: Operation Must Notify Parents or Managing Conservator

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

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

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

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

DFPS Rules, 40 TAC [§745.8661](http://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=8661)

Statement 3: DFPS Will Notify the Public

The final notice from DFPS to the permit holder or applicant must also explain that notice about the adverse action will be published by DFPS on the DFPS website. See [7635.2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7635_2) Additional Actions to Be Taken by Licensing Staff When Adverse Action Is Final.

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

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

DFPS Rules, 40 TAC [§745.8659](http://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=8659)

Statement 4: Applicant Is Restricted From Reapplying

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

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

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

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

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

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

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

LPPH ~~September 2012~~ DRAFT 9422-CCL

Procedure

Notifying DFPS Staff and Other Entities

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

a. Licensing attorney

b. district director

c. program administrator

d. supervisor

e. residential contract manager (when applicable)

f. staff of the following (when applicable):

• the local child and adult food care program

• the local child care services program

Entering Data in HHSC’s Adverse Action System

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

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

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

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

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

DFPS Rules, 40 TAC [§745.907](http://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=907)

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

See [7774](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7774) Documenting in the AARS When the Denial or Revocation of a Permit Is Final or the Role of Controlling Person Is Sustained.

#### 7636 Follow-Up to Suspension, Revocation, or Denial

LPPH ~~January 2013~~ DRAFT 9422-CCL

Procedure

Within two weeks after the final notice of revocation, suspension, or denial is mailed, the inspector conducts a follow-up inspection to:

• determine whether the operation is continuing to care for children; and

• obtain the license, registration, or listing if it has not been returned.

If no one is present at the operation, the inspector:

a. documents the inspection type as *Follow-up*, if the inspector observes enough to confirm the operation is no longer caring for children;

b. documents the inspection type as *Attempted*, if the inspector is not able to determine if the operation is continuing to care for children;

c. documents the observations made during the inspection in a chronology (type *Monitoring*); and

d. consults with the supervisor to determine the next course of action.

If the operation continues to operate, the inspector informs the supervisor, who notifies the district director. The director notifies DFPS Legal services and requests legal action against the operation (see [7740](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7740) Injunctive Relief).

If the revocation, suspension, or denial involves a state-operated operation, the director notifies the assistant commissioner of Licensing (see [2280](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2280) State-Operated Facilities Exempt From Licensure).

Publication note: No changes to 7637–7637.1.

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

LPPH ~~August 2012~~ DRAFT 9422-CCL

Procedure

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

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

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

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

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

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

c. The date the closure becomes effective

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

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

Publication note: No changes to 7637.3–7637.6. Current 7637.7 is deleted.

##### 7637.7 Update Operating Status

LPPH ~~July 2012~~ DRAFT 9422-CCL (NUM)

Procedure

Licensing staff change the operating status to *No* and update the *Effective Date* to reflect the *Begin Date* of the emergency suspension or emergency closure on the *Operation Main* page in CLASS.

#### 7638 Follow-Up to Emergency Suspension and Closure

LPPH ~~December 2009~~ DRAFT 9422-CCL

Procedure

The inspector establishes a schedule to inspect for compliance with an order for closure as immediate enforcement. The inspector informs the supervisor if the operation continues to operate. The supervisor notifies the district director, who will discuss the need for legal action with the state office Licensing attorney.

Publication note: No changes to 7700, 7710.

#### 7711 The Right to an Administrative Review

LPPH ~~December 2013~~ DRAFT 9422-CCL

Policy

The following persons may request an administrative review of a decision or action by Licensing:

a. The governing body, director, or designee of an operation that is entitled to request an administrative review

b. A person that Licensing has determined is an immediate threat or danger to the health or safety of children

c. A designated perpetrator of abuse, neglect, or exploitation against a child in care

d. The holder of an administrator’s license regarding the review of an enforcement action concerning that license

e. An individual whom Licensing intends to designate as a controlling person

DFPS Rules 40 TAC §§[745.8805](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8805); [745.8807](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=T&app=9&p_dir=N&p_rloc=145748&p_tloc=&p_ploc=1&pg=3&p_tac=&ti=40&pt=19&ch=745&rl=8805)

If a minor is designated as a perpetrator of abuse or neglect, the minor’s parent has the right to request an administrative review on behalf of the minor.

DFPS Rules 40 TAC [§745.21](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=21)

##### 7711.1 When An Operation Is Entitled to an Administrative Review

LPPH ~~December 2013~~ DRAFT 9422-CCL (TTL, REV)

Policy

Specific situations in which an operation’s governing body, director, or designee is entitled to an administrative review, include the following:

a. Licensing does not agree that the operation is exempt from DFPS regulation.

b. Licensing denies the operation’s request for a waiver or variance from a minimum standard.

c. Licensing cites the operation for a deficiency, and the operation does not agree that a deficiency was committed.

d. Licensing takes enforcement action against an operation, unless the enforcement action was voluntary or initially implemented through a court order.

Emergency suspensions, emergency closures, plans of action, technical assistance, administrative penalties, automatic suspensions, and automatic revocations also are not subject to administrative reviews.

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

DFPS Rules 40 TAC [§745.8805](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=8805)

##### 7711.2 When An Individual Is Entitled to an Administrative Review

LPPH ~~April 2011~~ DRAFT 9422-CCL (TTL, REV)

Policy

Specific situations in which an individual is entitled to an administrative review include the following:

a. Licensing determines that the individual is an immediate threat or danger to the health and safety of children in a child care operation.

b. Licensing designates the individual as a perpetrator of abuse, neglect, or exploitation.

c. Licensing takes enforcement action against the individual’s administrator’s license.

d. Licensing intends to designate the individual as a controlling person.

If a minor is designated as a perpetrator of abuse or neglect, the minor’s parent has the right to request an administrative review on behalf of the minor.

DFPS Rules 40 TAC §§[745.8805](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8805), [745.8807](http://texreg.sos.state.tx.us/public/readtac$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=8807)

Publication note: No changes to 7711.3, 7711.4.

#### 7712 Roles for Conducting an Administrative Review

LPPH ~~December 2013~~ DRAFT 9422-CCL

Policy

Routine Violations

A supervisor plans and conducts administrative reviews of routine violations.

Routine violations:

• are identified during inspections or investigations; and

• do not involve abuse or neglect.

All Other Decisions and Actions

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

a. division administrator;

b. district director;

c. program specialist; or

d. designee.

The reviewer:

• must not have been involved in making, taking, or staffing the decision or action; and

• must be from a different unit or region where the decision or action was made.

DFPS Rules 40 TAC [§745.8813](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=8813)

Publication note: No changes to 7713–7714.2.

#### 7715 Conducting an Administrative Review Conference

LPPH ~~April 2011~~ DRAFT 9422-CCL

Policy

The administrative review process includes a conference between the reviewer and the permit holder or individual who requested the review.

The conference provides the requestor with an opportunity to present to the reviewer relevant information and documentation to support his or her dispute. It also gives the reviewer an opportunity to ask the requestor questions about the case.

Procedure

The reviewer conducts the administrative review conference on the scheduled date. See [7714.1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7714_1) Scheduling an Administrative Review Conference.

The duration of the conference depends on the details, questions, and information being discussed.

The reviewer usually holds the conference by phone, but may meet with the requestor at the operation instead; for instance, when conducting an administrative review related to enforcement action taken against an operation or when designating an individual as a perpetrator of abuse, neglect, or exploitation, the reviewer may choose to conduct the review face-to-face.

Documenting a Conference in CLASS

After conducting an administrative review conference, the reviewer documents in the CLASS system:

a. the date of the conference;

b. a brief summary of the discussion held during the conference; and

c. any new information received. (Information received on paper is placed in the appropriate file).

In the case of individuals who have been designated as perpetrators of abuse, neglect, or exploitation, the reviewer enters the review date into the IMPACT system and documents the conference details in the *Narrative* field of the *Administrative Review/Appeal* stage.

Publication note: No changes to 7715.1–7723.

##### 7723.1 Additional Information for Permit Holders

LPPH ~~December 2013~~ DRAFT 9422-CCL

Procedure

If the designated perpetrator is a permit holder, add both of the following:

• That the finding may be the basis for enforcement action; or, if simultaneous to a notice of intent to revoke or deny, the details of the adverse action (Licensing may combine the release hearing with the appeal of the adverse action)

• The requirement that the request must be postmarked within 30 days after the person receives this notice.

Publication note: No changes to 7723.2, 7723.3.

#### 7724 Documenting the Results of the Due Process Hearing

LPPH ~~December 2013~~ DRAFT 9422-CCL

Procedure

The legal division notifies the appropriate Licensing district director or designee of the outcome of a due process hearing for child abuse or neglect. A licensing supervisor documents the results in Licensing’s official records of the investigation. This includes IMPACT, CLASS, and the paper files.

See [5331](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5331) Acting on Abuse and Neglect Findings in a DFPS Central Registry Report.

DFPS Rules, 40 TAC [§§](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8809)[745.8843](http://texreg.sos.state.tx.us/public/readtac$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=8843); [745.8849](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=8849)

See also:

[Appendix 7000-2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_7000_2.asp#LPPH_apx7000_2): Guidelines for Preparing Records for SOAH Hearings

Publication note: No changes to 7724.1–7731.

#### 7732 When an Administrative Law Judge Issues a Final Decision on an Appeal

LPPH ~~January 2013~~ DRAFT 9422-CCL

Procedure

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

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

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

The director, manager, or designee:

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

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

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

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

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

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

See also [7635](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7635) Sending an Operation Final Notice of Suspension, Revocation, or Denial.

Follow Up

Within two weeks after the letter is sent to the operation, the inspector conducts a follow-up inspection to determine whether the operation is continuing to care for children and obtain the license, certification, registration, or listing if the operation has not returned it. See [7636](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7636) Follow-Up to Suspension, Revocation, or Denial.

Publication note: No changes to 7733–7742.1.

### 7750 Civil and Criminal Penalties

LPPH ~~December 2009~~ DRAFT 9422-CCL

Policy

Civil and criminal penalties are considered in consultation with the DFPS Licensing attorney and the Office of the Attorney General.

The Human Resources Code, §[42.075](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.075) (Civil Penalty), provides for civil penalties for any person who:

• threatens serious harm to a child in an operation by violating laws, administrative rules, or licensing minimum standard rules;

• violates a provision of the law, administrative rules, or licensing minimum standard rules three or more times within a 12 month period;

• places a public advertisement for an unlicensed operation;

• knowingly fails to meet or maintain any criterion of an exemption and engages in activities that require a license or registration; or

• fails to inform the department of a change in status and knows the change in status requires the person to be licensed or registered.

The Human Resources Code, §[42.076](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.076), provides for criminal penalties:

• Section 42.076(a) states that a person who operates a child care operation or child placing agency without a license commits a Class B misdemeanor.

• Section 42.076(b) states that a person who operates a family home without a required listing or registration commits a Class B misdemeanor.

• Section 42.076(c) states that a person who places a public advertisement for an unlicensed facility or an unlisted or unregistered family home commits a Class C misdemeanor.

The Human Resources Code, §[42.056](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.056) provides for civil penalties (a Class B misdemeanor) if:

• the director, owner, or operator of a child care center knowingly:

• fails to submit to Licensing information about a person for use in background checks, and

• employs the person at the child care center or otherwise allows the person to regularly or frequently stay or work at the child care center while children are being provided care; or

• the director, owner, or operator of a day care center receives notice from Licensing that, based on the results of a person’s background check, the person may not be present at the child care center, and the director, owner, or operator knowingly:

• employs the person at the child care center, or

• otherwise allows the person to regularly or frequently stay or work at the child care center while children are being provided care.

Human Resources Code [§42.0761](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.0761) provides for penalties (a Class B misdemeanor), when an owner or operator of a child care center knowingly operates the child care center:

• without a director who meets the qualifications of a director; or

• without the routine presence of a director during the child care center’s hours of operation.

Texas Human Resources Code §§[42.056](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.056); [42.075](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.075); [42.076](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.076); [42.0761](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.0761)

### 7760 Settlement of Legal Case

LPPH ~~December 2009~~ DRAFT 9422-CCL

Policy

After the attorney general has accepted a case, agreeing to represent Licensing, the attorney general may suggest a settlement.

If the attorney general contacts the state office DFPS litigation counsel suggesting proposed settlement terms, the litigation counsel consults with the district director before making a decision about the settlement of a legal case involving temporary restraining orders, injunctions, or appeals of Licensing decisions to district courts.

Publication note: This appendix replaces the current Appendix 7000-1: Assessing the Need for Remedial Actions.

## Appendix 7000-1: Factors to Consider for Enforcement Actions

DRAFT 9422-CCL (NEW)

Licensing staff may consider enforcement actions when an operation meets any of the criteria outlined in 7110 Circumstances That May Call for Enforcement Action.

When determining what type of enforcement action to take consider the following:

Governing Body and Staffing

• Level of Involvement of the governing body has in the operation

• Ability to identify operation needs

• Knowledge behind intent of standards

• Knowledge of operation policy and procedures

• Other history as a permit holder, governing body, or a controlling person

Compliance History

• Scope and severity of deficiencies

• Patterns of deficiencies

• Repetition of deficiencies

• Investigation history

• Responsiveness to deficiencies

• Previous enforcement actions

Nature of Risk

• Isolated serious incident that may have resulted in injury or death or has resulted in injury or death

• Systemic issues at the operation that negatively impact the health and safety of children in care

Other/Extenuating Factors

• Operation capacity

• Type of permit

• Type of services provided

• Number of children impacted by enforcement action

• Impact to the community

• Involvement from the other governmental agencies