Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 745, Licensing

Subchapter K, Inspections and Investigations

Division 6, Technical Assistance

TAC Section Number(s) §§745.8581, 745.8583, 745.8585

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The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement the HRC §§42.042 and 42.0704.

§745.8581 What is technical assistance?

Technical assistance is information we provide to help you improve or maintain compliance with minimum standards, rules, and laws. Technical assistance itself is not a deficiency or enforcement action, and we do not use it in lieu of citing a deficiency.

§745.8583 When does Licensing provide technical assistance?

We may provide technical assistance in writing or in person:

(1) at any time during an inspection or investigation;

(2) as part of the ongoing regulatory process; or

(3) at your request.

§745.8585 May I request an administrative review for technical assistance offered?

No. We provide technical assistance in order to help you with your compliance with minimum standards and other laws. Technical assistance does not include a decision or action you may challenge through an administrative review. If we offer you technical assistance in addition to citing you for a deficiency, you would have the right to request an administrative review related to the deficiency, but not the technical assistance.

This agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority to adopt.

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Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 745, Licensing

Subchapter L, Enforcement Actions

Division 1, Overview of Enforcement Actions

TAC Section Number(s) §§745.8600, 745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613

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The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement the HRC §§42.042 and 42.0704.

§745.8600. What is the general purpose of the rules in this subchapter?

(a) The rules in this subchapter contain:

(1) the different types of actions that we use to enforce the requirements in rules, minimum standards, and statute; and

(2) the criteria that we use to determine what type of enforcement action we will take in specific circumstances.

(b) Our goal with respect to enforcement is to ensure the safety of children in care that is subject to our regulation. Our use of enforcement actions is tailored toward the objective of safety and not to be punitive in nature.

§745.8601. What happens if I am deficient in a minimum standard, rule, law, specific term of my permit, or condition of evaluation, probation, or suspension?

If you are deficient in a minimum standard, rule, law, specific term of your permit, or a condition of evaluation, probation, or suspension, we may offer one or both of the following:

(1) offer technical assistance; or

(2) recommend or impose an enforcement action against your permit.

§745.8603. What enforcement actions may Licensing recommend or impose?

(a) We may recommend a voluntary plan of action or impose a more serious enforcement action as outlined in the following chart:

|  |  |
| --- | --- |
| Types of Enforcement Actions | Description |
| (1) Voluntary and Corrective Actions | These actions address your deficiency without requiring you to close. Listed family homes are not subject to voluntary or corrective actions. |
| (2) Adverse Actions | These actions address your deficiency and may require you to close and/or add permanent restrictions or conditions to your permit. |
| (3) Judicial Actions | A court may impose these actions, including closure, when we request a court order to address your deficiency. |
| (4) Monetary Actions | These actions are fines or penalties that we may impose as provided by the Human Resources Code, §42.075 and §42.078. |

(b) We may impose an action listed in subsection (a) of this rule any time we determine there is a reason for imposing the action. We will choose the action based on its appropriateness in relation to the situation we are seeking to address. We do not have to recommend or impose a less restrictive action if we determine that a more restrictive action is more appropriate.

(c) In some situations, we may take multiple types of actions against your operation at the same time. For example, if you continue to operate pending the appeal of a denial, we may pursue a judicial action in order to prevent you from operating illegally.

§745.8605. When can Licensing recommend or impose an enforcement action against my operation?

We can recommend or impose an enforcement action any time we find one of the following:

(1) - (14) (No change.)

(15) You apply for a permit to operate a child-care operation within five years after:

(A) - (B) (No change.)

(16) - (25) (No change.)

§745.8607. How will Licensing decide which type of enforcement action to recommend or impose?

We decide to recommend or impose enforcement actions based upon our assessment of the following:

(1) - (4) (No change.)

(5) Whether you demonstrate the responsibility and ability to maintain compliance with minimum standards, rules, and laws;

(6) - (8) (No change.)

§745.8609. How will I know when Licensing is recommending or imposing an enforcement action against my operation?

We will notify you in the following manner:

|  |  |
| --- | --- |
| Type of Enforcement Action | Type of Notice |
| (1) Voluntary and Corrective Action | In writing at least 15 days before the start date of the voluntary plan of action, evaluation**,** or probation. |
| (2) Adverse Action | In writing, delivered in person**,** and/or by registered or certified mail that a specific type of adverse action is being taken against you and the start date of the action. |
| (3) Judicial Action | As required by the Rules of Civil Procedure for any hearings on judicial actions that we request a court to enforce. |
| (4) Monetary Action/Administrative Penalties | In writing at least 14 days after the recommendation for an administrative penalty is issued. |
| (5) Monetary Action/Civil Penalties | As required by the Rules of Civil Procedure for any hearings on civil penalties that we request a court to enforce. |

§745.8611. How long do enforcement actions that cover a specific period of time last?

(a) The following chart describes the length of time that we may recommend or impose an enforcement action:

|  |  |
| --- | --- |
| Type of Enforcement Action/Specific Action | Period of Time |
| (1) Voluntary Action/Voluntary Plan of Action | Six months. |
| (2) Corrective Action/  Evaluation | Six months. |
| (3) Corrective Action/  Probation | One year. |
| (4) Adverse Action/  Suspension | Up to 120 days. The suspension period will be the time we estimate is necessary to resolve the danger or threat of danger to the health or safety of children in your operation. |
| (5)Judicial Action/  Temporary Restraining Order | The court order will specify the timeframe and usually set a date for a hearing on whether you should continue to operate. The court may grant an extension as required by the law and will be noted in a new order. |

(b) We may end a voluntary or corrective action early if we determine:

(1) that you meet minimum standards and/or the imposed conditions and we are able to evaluate for ongoing compliance; or

(2) your compliance does not improve and a more restrictive enforcement action is necessary.

§745.8613. What rights do I have to challenge an enforcement action?

(a) The rights you have vary depending upon the type of action that we recommend or take against you. The chart in this subsection describes your rights to challenge each type of enforcement action:

|  |  |
| --- | --- |
| Type of Enforcement Action | Rights to challenge an Enforcement Action |
| (1) Voluntary Action/Plan of Action | You may not challenge a plan of action, since it is voluntary. |
| (2)Corrective Action | If we decide to impose a corrective action, then you have a right to an administrative review regarding the entire action or any of the conditions imposed as part of the action. |
| (3) Adverse Action | If we decide to impose an adverse action, then you have a right to an administrative review and a due process hearing before the State Office of Administrative Hearings. |
| (4) Judicial Action | If we attempt to have the court impose a judicial action, then your rights are before the court. |
| (5) Monetary Action/  Administrative Penalties | If we attempt to impose administrative penalties, then you have the right to a due process hearing before the State Office of Administrative Hearings. In addition,see the Human Resources Code §42.078 for your rights. |
| (6) Monetary Action/  Civil Penalties | If we attempt to have the court impose civil penalties, then your rights are before the court. |

(b) (No change.)

This agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority to adopt.

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Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 745, Licensing

Subchapter L, Enforcement Actions

Division 2, Voluntary and Corrective Actions

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The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement the HRC §§42.042 and 42.0704.

§745.8631. What types of voluntary or corrective actions may Licensing recommend or impose?

We may recommend or impose the following types of voluntary or corrective actions:

|  |  |
| --- | --- |
| Type of Enforcement Action/Specific Action | Description of Enforcement Action |
| (1) Voluntary Plan of Action/Plan of Action | A voluntary plan of action is a collaborative effort between Licensing and your operation. We will work with you to develop a plan to help you improve your operation's compliance with minimum standards and to reduce risk. We will inspect your operation more frequently to evaluate compliance with minimum standards. |
| (2) Corrective Action/Evaluation | If we place you on evaluation, then we will impose a corrective action plan. We willimpose conditions beyond the minimum standards and the basic permit requirements in order help you improve your operation's compliance with identified standards so that your operation is no longer deficient and you reduce risk at your operation. We will inspect your operation at least monthly to evaluate compliance with minimum standards and conditions imposed as part of the corrective action plan. |
| (3) CorrectiveAction**/**Probation | If we place you on probation, then we will impose a corrective action plan that is more restrictive and intense than an evaluation. We will impose conditions beyond the minimum standards and the basic permit requirements in order to help you improve your operation's compliance with identified standards so that your operation is no longer deficient and you reduce risk at you operation. We will inspect your operation at least monthly to evaluate compliance with standards and conditions imposed as part of the corrective action plan. |

§745.8633. When may Licensing recommend a voluntary plan of action?

(a) We may recommend a voluntary plan of action for your operation for an

issue identified in §745.8605 of this title (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

* 1. You:

(A) demonstrate the ability to identify risk;

(B) accept responsibility for correcting deficiencies; and

(C) have the ability to make corrections;

(2) If applicable, your operation has a history of making corrections to maintain compliance;

(3) Your operation will be able to mitigate risk by following the plan in addition to complying with minimum standards; and

(4) Your operation has not participated in a voluntary plan of action during the previous 12 months for similar issues.

(b) If you have multiple operations we may consider the factors listed in subsection (a) of this section for each of your operations when determining your eligibility to participate in a voluntary plan of action.

(c) We will impose a more restrictive enforcement action instead of recommending a voluntary plan of action when appropriate under the criteria for that enforcement action.

§745.8635. When may Licensing place my operation on evaluation?

(a) We may place your operation on evaluation for an issue identified in

§745.8605 of this title (relating to When can Licensing recommend or impose an enforcement action against my operation?) if:

(1) you are eligible to participate in a plan of action but refuse to do so;

(2) your operation is unable to resolve its deficiencies and reduce risk through your implementation of or failure to implement the plan;

(3) you have not completed evaluation for

similar deficiencies within the previous 12 months; or

(4) a more restrictive enforcement action is not necessary to reduce risk.

(b) If we determine that you are not eligible for evaluation, we will consider imposing probation or an adverse action.

§745.8637. When may Licensing place my operation on probation?

(a) We may place your operation on probation for an issue identified in §745.8605 of this title (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) your operation does not qualify for a less restrictive enforcement

action;

(2) you have not demonstrated the ability to make the necessary

changes to address risk, but express a willingness to comply and make corrections;

(3) your operation will be able to mitigate risk by complying with the

conditions identified in the plan in addition to minimum standards; and

(4) a more restrictive enforcement action is not necessary to reduce risk.

(b) If we determine that are you not eligible for probation, we will consider imposing an adverse action.

§745.8639. What requirements must I meet during a voluntary plan of action?

You must:

(1) correct your operation's deficiencies and reduce risk; and

(2) maintain compliance with all other Licensing statutes, rules, and minimum standards.

§745.8641. What requirements must I meet during the evaluation or probation period?

You must:

(1) comply with all of the conditions imposed by the corrective action plan;

(2) correct the deficiencies;

(3) unless you are an independent or agency foster family home, post the evaluation letter or the probation notice in a prominent place(s) near all public entrances; and

(4) maintain compliance with all other Licensing statutes, rules, and minimum standards.

§745.8643. What may Licensing do if my operation's compliance with standards does not improve as a result of the voluntary or corrective action?

If your operation's compliance with minimum standards does not improve sufficiently to reduce risk at your operation as a result of the voluntary or corrective action, we will reevaluate your plan to determine the appropriateness of its terms and conditions. As a result, we may:

1. recommend or impose additional conditions and/or increase inspections;

or

1. impose a more serious enforcement action.

This agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority to adopt.

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Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 745, Licensing

Subchapter L, Enforcement Actions

Division 2, Corrective Actions

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The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement the HRC §§42.042 and 42.0704.

§745.8633. What requirements must I meet during the evaluation or probation period?

§745.8635. What happens if I do not comply with the terms and conditions of the evaluation or probation?

This agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority to adopt.

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Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 745, Licensing

Subchapter L, EnforcementActions

Division 3, Adverse Actions

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The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement the HRC §§42.042 and 42.0704.

§745.8649. What adverse actions may Licensing impose?

We may impose the following adverse actions:

|  |  |
| --- | --- |
| Adverse Action | Description of Adverse Action |
| (1) Denial | You apply for a permit or an amendment of your permit, and we refuse to grant it. |
| (2) Adverse Amendment | After the issuance of your permit, we void your current permit and reissue a new permit with new or additional restrictions or conditions. |
| (3) Suspension | We take away your authority to operate for a specific period of time, so you can correct deficiencies. You must close your operation during a suspension. |
| (4) Revocation | We cancel your permit, and you must close. |

§745.8650. When may Licensing deny me a permit?

We may deny you a permit for an issue identified in §745.8605 of this title (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) a background check result makes you ineligible for a permit, because either the result is ineligible for a risk evaluation or the Department of Family and Protective Services Central Background Check Unit informs us that it will not approve a risk evaluation as provided in Subchapter F of this chapter (relating to Background Checks);

(2) your operation does not demonstrate the ability to comply with minimum standards and other applicable laws during your initial permit period, if applicable;

(3) the results of a public hearing make you ineligible for a permit;

(4) your operation presents an immediate threat to the health or safety of children; or

(5) You are otherwise ineligible for a permit because of a criteria identified in §745.8605 of this title.

§745.8651. When may Licensing impose an adverse amendment on my permit?

We may impose an adverse amendment on your permit for an issue identified in §745.8605 of this title (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine:

(1) that an amendment on your permit will mitigate any risks;

(2) the amendment would be the most effective enforcement action for addressing risk at your operation; and

(3) you are capable of following the restrictions of the amendment.

§745.8652. When will Licensing suspend my permit?

We may suspend your permit for an issue identified in §745.8605 of this title (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) your operation will pose a danger or threat of danger to the health or safety of children in your operation's care until the issue is resolved;

(2) you cannot correct the issue while children are in care, but you can do so during a specific period of time;

(3) you are capable of making the necessary corrections while your permit is suspended; and

(4) there are no additional concerns about your compliance history that would make revocation a more appropriate enforcement action for the health or safety of children.

§745.8654. When may Licensing revoke my permit?

We may revoke your permit for an issue identified in §745.8605 of this title (relating to When can Licensing recommend or impose an enforcement action against my operation?) if we determine that:

(1) your operation is ineligible for corrective action;

(2) we cannot address the risk at your operation by taking corrective action or another type of adverse action;

(3) a background check result or a finding of abuse or neglect makes you ineligible for a permit, either because the result is ineligible for a risk evaluation or the Department of Family and Protective Services (DFPS) Central Background Check Unit informs us that it will not approve a risk evaluation as provided in Subchapter F of this chapter (relating to Background Checks); or

(4) revocation is otherwise necessary to address the issue identified in §745.8605 of this chapter.

§745.8657. Will Licensing inform anyone that they are attempting to deny, suspend, or revoke my permit?

Yes, the fact that we are attempting to enforce any adverse action against you is available to the public. If you are a child day-care operation participating in the Child Care Services Program or the Child and Adult Care Food Program, we will inform the staff of those programs of any suspension or revocation that we are attempting to enforce. If a child in your care is in the custody of Department of Family and Protective Services (DFPS), then we will also inform the Child Protective Services Division of DFPS, and, as appropriate, any other state or federal programs. We will tell these programs that we are attempting to suspend or revoke your permit, that you may request an administrative review and a due process hearing concerning this action, and whether you may care for children pending the administrative review and due process hearing.

§745.8659. Will there be any publication of the denial, suspension, or revocation of my permit?

(a) If you waive the administrative review and due process hearing or if the denial, suspension, or revocation is upheld in the process, we will publish a notice of the adverse action taken against you on DFPS's Internet website along with other information regarding your child-care services**.**

(b) In addition, we will send notification of the outcomes of the administrative review and the due process hearing to those state and federal programs and agencies that we previously informed of the adverse action.

This agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority to adopt.

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Chapter 745, Licensing

Subchapter L, Enforcement Actions

Division 3, Adverse Actions

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The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements the HRC §§42.042 and 42.0704.

§745.8651. What adverse actions may Licensing impose?

This agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority to adopt.

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Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 745, Licensing

Subchapter L, Enforcement Actions

Division 5, Monetary Actions

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The amendment adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the HRC §§42.042 and42.078(a-2).

§745.8713. When may Licensing impose a monetary penalty before a corrective action?

We may impose a monetary penalty before imposing a corrective action any time we find:

(1) a violation of a high risk standard, as identified on the DFPS public website, along with the Licensing enforcement methodology; or

(2) one of the following:

(A) a failure to timely submit the information required to conduct a background and criminal history check under Subchapter F of this chapter (relating to Background Checks) on two or more occasions;

(B) except as provided in §745.626 of this title (relating to How soon after I request a background check on a person can that person provide direct care or have direct access to a child?), you knowingly allow a person to be present in your child-care operation before you have received the results of the person’s background and criminal history check;

(C) You knowingly allow a person to be present in your child-care operation after you have received the person’s background and criminal history check, if the results contain criminal history or central registry findings that preclude the person from being present in the child-care operation; or

(D) You violate a condition or restriction we have placed on a person’s presence at your child-care operation as part of a pending or approved risk evaluation of the person’s background and criminal history or central registry findings.

This agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority to adopt.

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