#### 1122 Licensing Statutes

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State statutes for Licensing are found in the following:

Human Resources Code

[Chapter 40](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.40.htm): Department of Family and Protective Services — Establishes and defines DFPS and its divisions

[Chapter 42](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm): Regulation of Certain Facilities, Homes, and Agencies That Provide Child-Care Services — Establishes standards for regulating child-care

[Chapter 43](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.43.htm): Regulation of Child-Care and Child-Placing Agency Administrators — Establishes standards for regulating the child-care administrators and child-placing agency administrators.

Family Code

[Chapter 261](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.261.htm): Investigation of Report of Child Abuse or Neglect

##### 1123.1 Chapters in the Texas Administrative Code Applicable to Licensing

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The following chapters in Title 40 of the Texas Administrative Code (TAC) apply to the DFPS rules for Licensing:

Licensing, [Chapter 745](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=745)

Minimum Standards for Shelter Care, [Chapter 743](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=743)

Minimum Standards for School-Age and Before- or After-School Programs, [Chapter 744](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=744)

Minimum Standards for Child-Care Centers, [Chapter 746](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=746)

Minimum Standards for Child-Care Homes, [Chapter 747](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=747)

General Residential Operations, [Chapter 748](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=748)

Child-Placing Agencies, [Chapter 749](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=749)

Independent Foster Homes, [Chapter 750](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=750)

#### 1142 Types of Residential Child Care

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Policy

The following table describes the types of residential child care that Licensing regulates. See also DFPS Rules, 40 TAC [§745.37(3)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=37).

| Residential Child-Care Operations | Description |
| --- | --- |
| Foster family home (Independent) | A single, independent home that:  • is the primary residence of the foster parents; and  • provides care for six or fewer children up to age 18. |
| Foster group home (Independent) | An independent foster group home is a home that is:  • a single, independent home licensed after January 1, 2007, that:  • is the primary residence of the foster parents, and  • provides care for seven to 12 children up to the age of 18 years;  or  • a single, independent home licensed before January 1, 2007, that provides care for seven to 12 children up to age 18. |
| General residential operation | An operation that provides child care for 13 or more children up to age 18.  The care may include treatment and other programmatic services. Residential treatment centers are a type of general residential operation. |
| Child-placing agency (CPA) | An agency, organization, or person (other than a child’s parent) that places or plans for the placement of the child in an adoptive home or other residential care setting. |
|  |  |
| CPA foster family home | A home regulated by a child-placing agency that:  • is the primary residence of the foster parents; and  • is verified to provide care for six or fewer children up to age 18. |
| CPA foster group home | A home regulated by a child-placing agency that is verified to care for seven to 12 children up to age 18.  Homes verified after January 1, 2007, must be the primary residence of the foster parents. |
| CPA adoptive home | A home approved by a child-placing agency for the purpose of adoption. |

### 2220 Permits Required for Residential Child Care

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The following table describes the permits required for each type of residential child care. See also DFPS Rules, 40 TAC [§745.37(3)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=37).

For a definition of each type of operation, see [1142](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_1000.jsp#LPPH_1142) Types of Residential Child Care.

| Residential Child-Care Operations | Type of Permit |
| --- | --- |
| Foster family home (Independent) | License |
| Foster group home (Independent) | License |
| General residential operation | License |
| Child-placing agency (CPA) | License |
|  |  |
| CPA foster family home | Verification  (The CPA issues the verification and regulates its own foster family homes.) |
| CPA foster group home | Verification  (The CPA issues the verification and regulates its own foster group homes.) |
| CPA adoptive home | None  (The CPA approves an adoptive home by completing a home screening, but no specific type of permit is required. The CPA regulates its own adoptive homes.) |

##### 5221 Licensed Operations – Fee Chart

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The chart below lists the fees that are required for a child care operation to obtain an initial, nonexpiring, or annual license. Child care operations include day care operations, residential operations, and child-placing agencies (CPAs).

Some licensed operations may be exempt from certain fees. See [5211](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5000.jsp?zoom_highlight=maternity#LPPH_5211) Exemptions From Fees.

| Fee Type and Amount | When to Notify an Operation | When a Fee Is Due | CCL Action When an Operation Fails to Meet Time Frames |
| --- | --- | --- | --- |
| Application: $35 | During the inquiry, pre-application, or application phases | Application acceptance date | Return application as incomplete. |
| Initial license for a child care operation (other than a child-placing agency): $35 | During the inquiry, pre-application, or application phases | Application acceptance date | Return application as incomplete. |
| Initial license for a child-placing agency: $50 | During the inquiry, pre-application, or application phases | Application acceptance date | Return application as incomplete. |
| Initial renewal for a child care operation (other than a child-placing agency): $35 | When the operation is informed that a nonexpiring license cannot be issued | Before renewal | Do not renew initial license. |
| Initial renewal for a child-placing agency: $50 | When the operation is informed that a nonexpiring license cannot be issued | Before renewal | Do not renew initial license. |
| First annual fee for a child care operation (other than a child-placing agency): $35 + $1 per licensed capacity | While the operation holds an initial license | Before issuance of a nonexpiring license | Administratively deny the permit, if the fee is not paid by the issuance date. |
| First annual fee for a child-placing agency: $100 | While the operation holds an initial license | Before issuance of a nonexpiring license | Administratively deny the permit, if fee is not paid by the issuance date. |
|  |  |  |  |
| Annual fee for a child care operation (other than a child-placing agency): $35 + $1 per licensed capacity | Two months before the anniversary date of the license (state office notifies) | Anniversary date of a nonexpiring license | Automatically suspend the permit, if the fee is not paid by the anniversary date.  Automatically revoke the permit, if the fee is not paid within six months after the automatic suspension begins. |
| Annual fee for a child-placing agency: $100 | Two months before the anniversary date of the license (state office notifies) | Anniversary date of a nonexpiring license | Automatically suspend the permit, if the fee is not paid by the anniversary date.  Automatically revoke the permit, if the fee is not paid within six months after the automatic suspension begins. |
|  |  |  |  |
| Change of ownership or location (not applicable for a CPA that only changes location): $35 for application  AND  For a child care facility: $35 for initial (only if being issued)  For a child-placing agency (not applicable for a CPA that only changes location): $50 (only if being issued)  OR  For a child care facility: $35 + $1 per licensed annual capacity  For a child-placing agency (other than a change of location): $100 | When notified of the change | Application acceptance date, before issuance | Administratively deny the permit, if the fee is not paid by the issuance date. |
| Amendment fee for a child care operation: $1 per licensed capacity increase | When the operation requests an amendment | Before the amendment is issued | Do not increase capacity. |
|  |  |  |  |

Texas Human Resources Code [§42.054](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.054)

## Definitions of Terms

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*Changes to definitions are the deletion of references to maternity homes.*

**child-care facility:** An establishment subject to regulation by Licensing that provides assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, and that provides the care for all or part of a 24-hour day. An establishment is a child-care facility whether or not it operates for profit or charges for its services. A child-care facility includes the people, administration, governing body, activities on or off the premises, operations, buildings, grounds, equipment, furnishings, and materials. A child-care facility does not include child-placing agencies or listed family homes. See 40 TAC [§745.21(6)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=21) and Texas Human Resources Code [§42.002(3)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002).

**minimum standards:** The minimum requirements for permit holders, enforced by DFPS to protect the health, safety, and well-being of children. The rules are contained in the following chapters of Title 40 of the Texas Administrative Code (TAC). See chapters: [743](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=743) (relating to Minimum Standards for Shelter Care), [744](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=744) (relating to Minimum Standards for School-Age and Before or After-School Programs) [746](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=746) (relating to Minimum Standards for Child-Care Centers), [747](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=747) (relating to Minimum Standards for Child-Care Homes), [748](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=748) (relating to Minimum Standards for General Residential Operations), [749](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=749) (relating to Minimum Standards for Child-Placing Agencies), and [750](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=19&ch=750) (relating to Minimum Standards for Independent Foster Homes).

**monitoring plan:** A plan that sets intervals between inspections to a child-care facility or child-placing agency.

**operation:** A person or entity offering a program that may be subject to regulation by Licensing. An operation includes the building and grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program. An operation includes a child-care facility, child-placing agency, or listed family home. See 40 TAC [§745.21(27)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=21).

**permit:** A license, certificate, registration, listing, or any other written authorization granted by Licensing to operate a child-care facility, child-placing agency, or listed family home. This also includes a licensed administrator’s permit. See 40 TAC [§745.21(29)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=21).

**residential child care:** The care, custody, supervision, assessment, training, education, or treatment of a child in a place other than the child's own home for 24 hours a day and the child is younger than 18 and unrelated to the owner or operator. Residential child care also includes child-placing agencies. See 40 TAC [§745.35](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=35).

**variance:** An alternate method of compliance requested by an operation that allows the operation to comply with a specific minimum standard in a way that meets the intent of the standard but is different from the usual compliance, as long as the health, safety, and well-being of the children is reasonably protected. See Texas Human Resources Code [§42.048(c)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.048).

**waiver:** An exception granted by Licensing when a child-care facility or child-placing agency requests that it not be required to comply with a specific minimum standard. The waiver is granted if Licensing determines that the economic impact of compliance is great enough to make compliance impractical and if the possibility of risk is not significantly increased. See Texas Human Resources Code [§42.042(j)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.042).

## Appendix 1000-2: Organizing Licensing Records

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All Licensing staff follow the same guidelines for maintaining Licensing records, although some information and documentation described in this appendix may not apply to all types of operations or licensed administrators. Licensing staff, therefore, include in the record only the information that applies to the type of operation or licensed administrator.

Licensing staff document work in the CLASS system, the hard copy record, and the IMPACT system (if applicable). Documentation must be objective, concise, and clear.

CLASS documentation is printed and filed as hard copy only when appropriate; for example, to file an open records request or file the documentation of hearings conducted through the State Office of Administrative Hearings (SOAH).

What to Enter in the *Chronology* Field in CLASS

The *Chronology* field in CLASS is used to document an operation’s activities during the pre-application phase, the application phase, and regulatory activities, in order of occurrence.

All chronologies are documented in the CLASS and CLASSMate. Some chronologies are generated automatically by CLASS, while others are entered by Licensing staff.

Entries Made by Staff

When documenting an activity as a chronology in CLASS, Licensing staff:

• do *not* repeat the details that appear in a DFPS letter or form; and

• enter in the *Entry Date* field the date of the *activity*, not the date of the entry.

Most letters and forms completed by Licensing staff are documented in the CLASS system, but some are documented only in the hard copy record.

Licensing staff must enter the following information in the *Chronology* field in CLASS:

a. Contacts and decisions made during the pre-application phase

b. Contacts with and actions taken on illegal operations

c. Significant telephone conversations and correspondence

d. Exceptions to the licensing process

e. Instructions from the supervisor, district director, or manager

f. Court actions

g. Court-related documents, such as correspondence requesting court action, petitions, and court orders

h. Changes of location (*listed and registered homes only*)

i. Remedial actions that are not automatically generated in CLASS

j. Documentation and results of searches for controlling persons in the HHSC Adverse Action Record Sharing system (AARS); and

k. Other actions related to a controlling person that are not automatically generated in CLASS.

Entries Made by CLASS

Based on information entered in CLASS by Licensing staff, CLASS automatically generates a chronology for the following:

a. Application decisions

b. Inspections and investigations made at an operation

c. Waiver and variance requests and decisions

d. Issuance of a permit

e. Notification for an administrative review, responses to the notification, and the outcome

f. Appeal requests, actions, and all decisions made through the appeal process

g. Change of ownership

h. Change of location (**Exception:** Chronologies for a change of location for a listed home or registered home are entered by Licensing staff).

i. Finalization of letters

j. Transferring a record

k. Closing a record

l. Controlling person decisions

If there is a need to file the chronology in the hard copy record, Licensing staff:

• print the chronology from CLASS; and

• file it on the left side of the hard copy record, with the most recent chronology entry on top.

Organizing the Hard Copy Record

Licensing staff include in the hard copy record the paperwork necessary to show that the licensing and regulatory process has been carried out according to statute, administrative rules, and the policies and procedures published in this handbook.

For a face sheet, staff may print a copy of the *Operation Main* page from CLASS or a copy of the Compliance History Report from CLASS and file it on top of the most recent chronology.

Examples of the paperwork filed in the record include:

a. forms and correspondence related to licensing, certification, registration, or listing permits;

b. correspondence from the applicant or permit holder; and

c. correspondence from others involved in the regulatory process.

Licensing staff:

a. organize the hard copy record so that it includes dividers that are tabbed and labeled by subject;

b. organize the hard copy record chronologically, starting with the current monitoring period;

c. file all documentation on the right side of the record, with the most recent documents on top within each tabbed section;

d. ensure that documentation in the hard copy record is legible; and

e. print and file CLASS documentation only when appropriate; for example, printing open records requests or the documentation of hearings conducted through the State Office of Administrative Hearings (SOAH).

Licensing staff do *not* include schedules for case readings and other internal monitoring forms in the hard copy record.

Recommended Tabs for the Hard Copy Record

It is recommended that Licensing staff file paperwork in the hard copy record under the tabs listed below.

Tab 1: Application and Permit

The following paperwork is filed under this tab:

a. A copy of the current permit

b. The issuance letter

c. The issuance summary report

d. Amendment summary

e. The operation’s floor plan

f. Information related to public hearing requirements, when applicable

g. Form 2910 Child Day Care Licensing Application or Form 2960 Application for a License to Operate a Residential Child Care Facility or Child-Placing Agency

h. [Form 2911](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2911P.doc) Governing Body/Director Designation (child day care)

i. CLASS Form 2860E Director’s Certificate

j. [Form 2982](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2982.doc) Personal History Statement

k. [Form 7257](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=7257.xls) Day Care Space Computation (or calculator tape showing the computation)

l. [Form 2948](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2948.doc) Plan of Operation for Licensed Center Operations (or the documentation required when applying for residential licensing, as indicated on [Form 2784](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2784.doc) General Residential Operation and Residential Treatment Center - Documentation Required at Application, [Form 2785](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2785.doc) Child-Placing Agency — Documentation Required at Application, or [Form 2786](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2786.doc) Independent Foster Home — Documentation Required at Application)

Tab 2: Regulation

The following paperwork is filed under this tab:

a. [Form 2936](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2936-P2A.doc)-P2a Child Care Operation Inspection Form

b. Compliance letters

c. Administrative review letters

d. Corrective action plans

e. Correspondence on revocation, denial, or suspension of a permit

f. Other regulatory correspondence

g. Correspondence related to judicial actions

h. Petitions

i. Court orders

Tab 3: Non-Abuse and Neglect Investigations

The following paperwork is filed under this tab:

a. Any documentation not found in the CLASS system

b. Any paperwork with original signatures

c. Cross references to the *Regulation* tab, as appropriate

Tab 4: Waiver/Variances

The following paperwork is filed under this tab:

a. [Form 2937](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2937.doc) Child Care Waiver/Variance Request

b. Correspondence related to waivers and variances

c. Supporting documentation

Tab: 5: Miscellaneous Documentation

The following paperwork is filed under this tab:

a. Correspondence related to the pre-application process

b. Inspection reports from other agencies or organizations, if provided

c. [Form 2962](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2962.doc) Verification of Insurance and proof of liability insurance or an exception to liability coverage and notification to the parent about the exception

d. Miscellaneous correspondence

Tab 6: Confidential

The following paperwork is filed under this tab:

a. [Form 2971](http://intranet.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2971.doc) Request for Background Check

b. The results of criminal history and Central Registry checks

c. Matches from either the Central Registry or criminal history checks and any subsequent documentation

Tab 7: Controlling Person

The following paperwork is filed under this tab:

a. Form 2760 Controlling Person Form

b. [Form 2761](http://intranet/application/Forms/showFile.aspx?NAME=2761.doc) Identify a Controlling Person

c. [Form 2762](http://intranet/application/Forms/showFile.aspx?NAME=2762.doc) Intent to Designate a Controlling Person

d. [Form 2763](http://intranet/application/Forms/showFile.aspx?NAME=2763.doc) Controlling Person Administrative Review Decision

e. [Form 2764](http://intranet/application/Forms/showFile.aspx?NAME=2764.doc) Final Sustained Controlling Person

f. [Form 2765](http://intranet/application/Forms/showFile.aspx?NAME=2765.doc) Match of an Ineligible Controlling Person

g. [Form 2766](http://intranet/application/Forms/showFile.aspx?NAME=2766.doc) Stop Due Process of a Controlling Person

h. Other external documentation related to controlling persons

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

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

[Child Day Care Provided at a Caregiver’s Home](#caregiver)

[Child Day Care Provided at a Location Other Than the Caregiver’s Home](#other)

[Determining Whether the Care Provided Is Subject to Regulation as a Residential Child-Care Facility](#residential)

Child Day Care Provided at a Caregiver’s Home

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

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

• If **yes,** see step 2.

• If **no,** see [Child Day Care Provided at a Location Other Than the Caregiver’s Home](#other)

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

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

• If **no**, see step 3.

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

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

• If **no**, see step 4.

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

• If **yes,** see step 5.

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

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

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

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

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

a. Determine compliance with the minimum standards outlining the maximum number of children by age for registered child care homes (see [Minimum Standards for Child-Care Homes](http://www.dfps.state.tx.us/documents/Child_Care/Child_Care_Standards_and_Regulations/2012-03_747_Homes.pdf)). If the total number in care at any one time exceeds the maximum allowed based on the ages, the number must be reduced.

b. Determine compliance with the minimum standards outlining the maximum number of children by age for licensed child-care homes (see [Minimum Standards for Child-Care Homes](http://www.dfps.state.tx.us/documents/Child_Care/Child_Care_Standards_and_Regulations/2012-03_747_Homes.pdf)). If the total number in care at any one time exceeds the child/caregiver ratios, the number must be reduced.

See

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

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

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

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

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

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

• If **yes**, see step 2.

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

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

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

• If **yes**, see step 3.

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

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

• If **yes**, see step 4.

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

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

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

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

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

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

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

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

Evaluating Child-Placing Services

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

• does not receive compensation for its services; and

• does not conduct child-placement activities.

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

Licensure by Another State Agency

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

Evaluating Boarding Schools

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

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

b. The educational operation operates the program.

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

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

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

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

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

Exemptions for All Other Residential Operations

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

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

2. The following state-operated programs:

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

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

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

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

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

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

3. Programs of limited duration

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

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

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

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

b. A religious program, if it is:

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

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

c. A respite care program, if:

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

2. the care is planned;

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

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

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

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

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

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

e. An arrangement between friends, if:

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

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

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

4. Miscellaneous programs

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

1. There is only one unrelated child or sibling group

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

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

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

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

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

1. the purpose of the facility is to provide shelter for mothers who are minors;

2. the mothers are the sole support of their children;

3. the shelter provides care for the mothers and their children only when there is an immediate danger to the physical health or safety of the mother or her children;

4. the shelter does not provide care for more than 15 days, unless the parent of the minor has qualified for Temporary Assistance for Needy Families (TANF) and is on the waiting list for housing assistance; and

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

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

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

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

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