##### 7631.3 Notifying an Operation About an Adverse Action When There Is Risk to the Health or Safety of Children

LPPH ~~September 2012~~ DRAFT 5887-CCL

If appropriate, the notification letter (CLASS Form 2880 Intent to Impose Adverse Action) must explain that the operation poses an immediate risk to the health or safety of children.

The inspector:

a. includes a statement that because of these risks, the operation must discontinue operating pending the outcome of a due process hearing, unless the permit holder obtains injunctive relief from a district court in the county in which the operation is located;

b. specifies how the operation poses an immediate danger to a child’s safety or health, or both, with information included as outlined under TAC [§745.751](http://info.sos.state.tx.us/pls/pub/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=751));

c. includes all pertinent information, such as:

 *Your operation poses an immediate risk to the health or safety of children for several reasons: First, you have failed to meet the standards for supervision during eight inspections; second, two staff members were recently found to have neglected a child, and the child suffered substantial physical injuries because of the neglect; and third, the operation has failed to comply with minimum standard §\_\_\_.\_\_\_ eight times.*

If the operation poses a risk to a child’s health or safety, the district director or residential director changes the operation’s main page in CLASS by selecting the checkbox *Do not display on public/provider website* to reflect that the operation must not be posted.

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

DFPS Rules, 40 TAC [§745.8875](http://info.sos.state.tx.us/pls/pub/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=8875)

Sending Notification to the Operation

If the operation poses an immediate threat to the health or safety of children, the inspector is responsible for providing immediate notification to the operation. See [7631.8](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7631_8) Authorizing and Delivering a Notification Letter (CLASS Form 2880).

##### 7631.8 Authorizing and Delivering a Notification Letter (CLASS Form 2880)

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The notification letter (CLASS Form 2880 Intent to Impose Adverse Action), must be signed by the inspector’s director, manager, or designee.

The inspector:

 • 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.

The inspector sends a copy of the letter to the:

a. director;

b. manager (if applicable);

c. Licensing attorney;

d. supervisor; and

e. residential contract manager (if applicable).

Day care inspectors also notify:

 • the local Child Care Management Services (CCMS); and

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

DFPS Rules, 40 TAC [§745.8657](http://info.sos.state.tx.us/pls/pub/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=8657)

Operation Is Required to Close Immediately

If the operation poses an immediate threat to the health or safety of children, the inspector is responsible for providing immediate notification to the operation by delivering the letter to the permit holder or applicant personally.

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

 • The dates that the letter was delivered to and received by the operation

 • The name of the person at the operation who received the notification

If the operation is located at a distance where the inspector is not able to immediately hand-deliver the letter, the inspector:

a. notifies the permit holder or applicant by telephone;

b. sends the letter by email or fax; and

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

#### 7633 Notice of Decision to Revoke, Deny, or Suspend an Application or Permit

LPPH ~~September 2012~~ DRAFT 5887-CCL

Policy

If, after the opportunity for administrative review, Licensing decides to revoke, suspend, or deny an application or permit, the district director, the director of residential child care licensing, or a designee sends a certified letter to the permit holder or applicant to notify the permit holder or applicant about the decision.

DFPS Rules, 40 TAC [§745.8609](http://info.sos.state.tx.us/pls/pub/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)

Procedure

The inspector notifies the permit holder or applicant about the decision to revoke, suspend, or deny, by sending a decision letter (CLASS Form 2878 Decision to Impose Adverse Action) by both regular and certified mail.

The decision letter must include the following:

a. A statement that the permit holder or applicant either did not request an administrative review, or did request an administrative review but the decision to take adverse action was upheld

b. The date that the administrative review was held, if applicable

c. The name of the Licensing staff who conducted the review, if applicable

The legal authority for the adverse action is Human Resources Code [§42.072(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm).

The inspector includes additional legal authority as applicable and with direction from DFPS legal staff for adverse action because of matches found during a background check, matches found during a search for a controlling person, or for the denial of a residential license.

For example, HRC §42.072(f) requires Licensing to revoke or deny an operation’s permit if the results of a background check show that a person has been convicted of an offense under [Title 5](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.19.htm), [Title 6](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.25.htm), or [Chapter 43](http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.43.htm) of the Penal Code.

The inspector must also:

 • include a statement that the notification letter (CLASS Form 2880 Intent to Impose Adverse Action), was sent, demonstrating the basis for the action; and

 • attach a copy of the notification letter (CLASS Form 2880).

Notifying Operation That Is Required to Close Immediately

If the operation poses an immediate threat to the health or safety of children, the inspector is responsible for providing immediate notification to the operation by delivering the letter to the permit holder or applicant personally.

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

 • The dates that the letter was delivered to and received by the operation

 • The name of the person at the operation who received the notification

If the operation is located at a distance where the inspector is not able to immediately hand-deliver the letter, the inspector:

a. notifies the permit holder or applicant by telephone;

b. sends the letter by email or fax; and

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

##### 7633.1 Immediate Risk to Children

LPPH ~~December 2009~~ DRAFT 5887-CCL

Procedure

If appropriate, the letter must include a statement that the operation poses an immediate risk to the health or safety of children, or both. The inspector includes a statement that because of these risks, the operation must discontinue operating pending the outcome of a due process hearing unless the permit holder obtains injunctive relief from a district court in Travis County or the county in which the operation is located.

The inspector must specify how the operation poses an immediate danger to the safety or health of children, or both, in the text box provided in the CLASS letter by including information as outlined under 40 TAC [§745.751](http://info.sos.state.tx.us/pls/pub/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=751).

The letter must include all pertinent information. For example:

Your operation poses an immediate risk to the health and/or safety of children for several reasons. First, you have failed to meet the standards for supervision during eight inspections. Second, two staff members were recently found to have neglected a child, and the child suffered substantial physical injuries because of the neglect. Third, the operation has failed to comply with standard *§*\_\_.\_\_\_ eight times.

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

DFPS Rules, 40 TAC [§745.8875](http://info.sos.state.tx.us/pls/pub/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=8875)

Sending Notification to the Operation

If the operation poses an immediate threat to the health or safety of children, the inspector is responsible for providing immediate notification to the operation. See [7633](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7633) Notice of Decision to Revoke, Deny, or Suspend an Application or Permit.