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.

Reporter Notifications (PATS 6312)

This revision includes the application process for illegal operations and changes to handling illegal operation investigation procedures, and adds a section for worker safety.

Display of Revisions With Changes Highlighted (Word Document)

See:

3120 Documentation

3121 Initiating an Application in CLASS

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### 3120 Documentation

LPPH ~~April 2010~~ 6312-CCL DRAFT ((Title didn't change)

Policy

Licensing staff must enter all decisions and facility information related to the application and issuance process in the CLASS system.

#### 3121 Initiating an Application in CLASS

6312-CCL DRAFT (new item)

Procedure

Licensing staff initiate an application in CLASS by:

• entering the application information when a paper application is submitted; or

• searching for and adding an operation to CLASS when an e-application is submitted.

Initiating an Application for an Illegal Operation

When an illegal operation that is the subject of a CCL investigation applies for a permit:

• staff must first enter the *Application Received Date* on the *Illegal Operation* main page before entering the application information when a paper application is submitted; or

• staff search for the open operation and select *Update to CLASS* when an e-application is submitted.

##### 6251.2 Entering Reports of Illegal Operations

6312-CCL DRAFT (new item, replaces old one with the same number that moved to 6251.3)

Procedure

When receiving a report of a possible illegal operation, DFPS staff must search to determine whether the operation already exists in CLASS by using the *Operation Search* to search for open and closed operations. If staff finds that the operation is listed, registered, or licensed, and there are no concerns of violations of minimum standards, staff closes the intake report administratively.

Entering an Intake Report for an Operation With a History of Operating Illegally

If the operation has a history of operating illegally, re-open the former operation and enter the investigation under the previous operation number. If more than one prior operation exists, the caseworker reopens the most recent operation.

Entering Reporter Information for Illegal Operations Identified by DFPS Staff

Upon finding the operation through a media search, identify that the operation was found by DFPS staff by entering the following information under the *Reporter Information* section of the *Intake Persons* page:

• entering *DFPS Identified* in the *Last Name* field

• selecting *FPS Staff* from the *Relationship to the Operation* dropdown menu

##### 6251.3 Encouraging a Reporter to Disclose His or Her Identity

LPPH ~~December 2012~~ 6312-CCL DRAFT (moved item, was 6251.2)

Numbering change only

##### 6251.4 Processing the Intake Report

LPPH ~~December 2012~~ 6312-CCL DRAFT (moved item, was 6251.3)

Numbering change only

### 6450 Conducting Surveillance (Day Care Only)

LPPH 6312-CCL DRAFT

Policy

An investigator or supervisor may determine that surveillance is necessary to determine whether:

a. a program or caregiver is subject to regulation;

b. an operation is complying with a safety plan that requires the operation to cease operating;

c. can operation is providing care to more children than the permit allows; or

d. allegations of abuse or neglect or violations of minimum standards have a factual basis

Procedure

An investigator must receive supervisory approval to conduct surveillance. All decisions regarding conducting surveillance must be documented as a contact on the *Investigation Conclusion* page in CLASS.

Upon receiving the necessary approval, the investigator may conduct surveillance at the location of the operation or at other locations where children in care are transported by the operation. The investigator 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) Digital Cameras and Photographs

### 6550 Investigations of Illegal Operations

LPPH ~~December 2012~~ 6312-CCL DRAFT (title change)

#### 6551 Conducting Searches

6312-CCL DRAFT (new item)

Upon receiving information of a possible illegal operation, search the following databases in the order listed using a variety of parameters, including name, address, and telephone number:

a.• CLASS, to determine whether the operation has a permit or has previously been reported to be operating illegally, or if anyone associated with the operation has a background check

b. IMPACT, to determine whether any person associated with the operation is a designated or sustained perpetrator

c. The DPS sex offender registry, to determine whether the operation’s address is an exact match to an address listed on the registry or whether any person associated with the operation is listed in the registry

If only a phone number is known, staff should first conduct a reverse telephone number search on a free, publicly available website to obtain further identifying information.

For illegal daycare operations, initiate an Accurint search in accordance with district procedures if no information is available through use of the search methods listed above. Additionally, with approval by the director or manager, the Family Inquiry Network / Database Search System (FINDRS) may be accessed to obtain additional information on a limited basis.

See 6251.2 Entering Reports of Illegal Operations.

#### 6552 Prioritizing Investigations of Illegal Operations

6312-CCL DRAFT (new item)

Policy

Licensing staff must classify reports (including self-reports) of illegal operations as Priority 3 when there are:

• no allegations that children are unsafe or at a risk of being harmed; and

• no allegations or indications of abuse, neglect, or exploitation.

Licensing staff must classify reports (including self-reports) of illegal operations as Priority 2 when there is:

a. an allegation that children are unsafe or at risk of being harmed;

b. a criminal history result on a household member that requires a risk assessment or for that household member to be barred from the operation;

c. a household member is a designated or sustained perpetrator of abuse or neglect of a child;

d. a search of the sex offender registry indicates an exact match; or

e. the home has previous history of operating illegally.

Licensing staff must classify reports (including self-reports) of illegal operations as Priority 1 if the report concerns an immediate threat to the health or safety of a child in care.

A non abuse or neglect intake report that is classified as a P1 includes, but is not limited to, reports concerning:

• structural damage to the home or operation that makes the home or operation uninhabitable; or

• the presence of unsafe or hazardous equipment or materials.

If there are allegations of abuse, neglect, or exploitation, or a child dies, see [6222](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6222) Assessing an Intake Report for Priority.

#### 6553 Initiating the Investigation

LPPH ~~December 2012~~ 6312-CCL DRAFT (moved item; was 6551)

Procedure

To initiate an investigation assigned a Priority 3 (P3), the investigator notifies the alleged provider that the operation may be subject to regulation by:

a. calling the provider;

b. sending Form J-800-2864 Illegal Operations Notification Letter, located in the CLASS system via regular mail or email (if only the email address is known); or

c. conducting an inspection.

If there is no response to a phone call, letter, or email, Licensing staff must inspect the location within the required 30-day inspection time frame.

Initiate an investigation assigned a Priority 2 (P2) by conducting an inspection unless:

• a director or manager approves initiating the investigation by another method; or

• only a telephone number or email address is available.

See [6431](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6400.asp#LPPH_6431) Requirements for Conducting Unannounced Inspections.

#### 6554 Conducting the Investigation of an Illegal Operation

LPPH ~~December 2012~~ 6312-CCL DRAFT (moved item; title change, was 6552)

Policy

The purpose of the investigation is to obtain information to determine whether the operation is subject to regulation and determines whether any obvious hazards are present.

If the investigator determines the operation is subject to regulation, the investigator:

a. assesses the safety of children in care. If any child appears to be at immediate risk of harm at any point in the investigation, the investigator consults with the supervisor to determine the appropriate course of action to ensure the safety of the children. This may include closure of the operation;

b. provides the appropriate application to the operation if the operation wishes to continue operating; and

c. conducts an inspection to ensure closure of the operation if the provider fails to submit the application within the required time frame. Staff must obtain supervisory approval if no inspection is conducted.

If the investigator believes that the operation may be exempt from regulation, the investigator may ask the operation to complete an Exemption Request Form (see [2200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2200) Types of Child Care and Multiple Operations). This form should be submitted to Licensing no later than seven days after the investigation inspection.

##### 6554.1 Conducting the Investigation When An Address Is Known

LPPH 6312-CCL DRAFT (new)

Procedure

If the address of the operation is known the investigator initiates the investigation based upon the priority as outlined in 6553 Initiating the Investigation.

If the investigation is prioritized as a Priority 3 (P3), the investigator may initiate the investigation by mailing Form J-800-2864 Illegal Operations Notification Letter to the operation within five days of receipt of intake requesting that the provider contact the investigator within five days.

Provider Fails to Contact Investigator Within Five Days

If the provider fails to contact the investigator within five days, the investigator:

a. conducts an inspection of the operation as soon as possible but no later than 30 days after receipt of intake to determine whether the operation is subject to regulation;

b. provides the appropriate application to the operation if the provider wishes to continue operating, if the operation is determined to be subject to regulation;

c. requests that the provider submit the appropriate application within five days of the date of inspection; and

d, follows up within 15 days of the date the application was provided if the application has not been submitted to ensure closure of the operation or to obtain the application.

Provider Contacts the Investigator Within Five Days

If the operation does contact the investigator within five days as requested the investigator advises the operation of the legal requirements for licensing and determines if the operation is subject to regulation.

If the investigator determines the operation is not subject to regulation, the investigator closes the investigation and the illegal operation with a finding of compliance for the allegation.

If the investigator determines the operation is subject to regulation, the investigator:

a. mails Form J-800-2965 Illegal Operation Application Cover Letter and the application to the operation or provides the link for electronic submission of an application;

b. advises the operation that the application must be submitted within five days from receipt of the application or submitted electronically within five days from the date of contact;

c. inspects the operation as soon as possible but no later than 30 days after the date of the intake if there is no response to the letter,

d. obtains the application or ensures the operation has ceased operating.

The investigator documents all contacts according the policies listed under [6723](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6723) Contact List.

##### 6554.2 Conducting Investigations When Only a Phone Number Is Known

LPPH 6312-CCL DRAFT (new)

Procedure

When a search conducted under 6551 Conducting Searches reveals only a telephone number for an alleged illegal operation, the investigator initiates the investigation by attempting to contact the provider by phone call within five days of receipt of intake and conducts the investigation in the following manner:

a. If the investigator is unable to make contact with the provider, the investigator must attempt at least two more phone contacts during varying times and days within the first 15 days of receipt of the intake. If the investigator is unable to make contact after three attempts, the investigation should be closed.

b. If the phone number is not in service, the investigation should be closed.

c. When phone contact is successful, the investigator takes the following actions:

1. If possible, obtain the address and name of the provider.

2. Staff with the supervisor if the provider is not cooperative in providing information.

3. Make a determination, based upon information from the provider, whether the operation is subject to regulation.

4. If the operation is not subject to regulation, close the investigation and operation in CLASS.

5. If the operation is subject to regulation, the investigator sends Form J-800-2965 Illegal Operation Application Cover Letter and the application to the operation and advises the provider to return the application within five days.

6. If the application or written notification of closure is not submitted, inspect the operation as soon as possible but no later than 30 days after the date of intake to obtain the application or ensure closure of the operation. The investigator documents all contacts and attempted contacts in the investigation chronology according the policies listed under [6723](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6723) Contact List.

See 6557 Procedures When an Illegal Operation Is Determined to Be Not Subject to Regulation.

##### 6554.3 Conducting Investigations When Only an Email Address Is Known

LPPH 6312-CCL DRAFT (new)

When a search conducted under 6551 Conducting Searches reveals only an e-mail address for an alleged illegal operation, the investigator initiates the investigation by emailing the provider and conducts the investigation in the following manner:

a. Investigator sends an email by copying and pasting Form J-800-2864 Illegal Operation Notification Letter from electronic forms into the body of the email.

b. If the email is returned as undeliverable then the investigation is closed.

c. If there is no response after three attempted contacts within 15 days of the intake, staff with the supervisor for further instructions.

d. When email contact is successful, the investigator takes the following actions:

1. If possible, obtain the address and name of the provider.

2. Staff with the supervisor if the provider is not cooperative in providing information.

3. Make a determination, based upon information from the provider, whether the operation is subject to regulation.

4. If the operation is not subject to regulation, close the investigation and operation in CLASS.

5. If the operation is subject to regulation, the investigator sends Form J-800-2965 Illegal Operation Application Cover Letter and the application to the operation and advises the provider to return the application within five days.

6. If the application or written notification of closure is not submitted, inspect the operation as soon as possible but no later than 30 days after the date of intake to obtain the application or ensure closure of the operation.

The investigator documents all contacts according the policies listed under [6723](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6723) Contact List.

See 6557 Procedures When an Illegal Operation Is Determined to Be Not Subject to Regulation.

#### 6555 Obtaining Consent to Enter an Illegal Operation

LPPH ~~December 2012~~ 6312-CCL DRAFT

Policy

Licensing staff must receive affirmative and voluntary consent from a person legally authorized to grant permission to enter an establishment for the purpose of an investigation related to allegations of:

• the existence of an illegal operation; or

• abuse or neglect in an illegal setting.

Procedure

The investigator must obtain consent to enter in writing using [Form 2895](http://www.dfps.state.tx.us/Application/FORMS/showFile.aspx?Name=2895.doc) Consent to Enter Illegal Operation.

If a provider refuses to allow an inspection of an operation subject to regulation for the purposes of an inspection or investigation, the investigator reminds the provider that a citation may be issued for failure to follow statute or administrative rules.

If the provider refuses to allow the investigator to enter, the investigator continues with other investigation activities to gain as much information as possible to determine the status of the illegal operation. This includes:

a. observing the outside environment of the establishment;

b. conducting surveillance of the establishment;

c. talking to parents who may be dropping off or picking up children;

d. interviewing neighbors; and

e. interviewing other collaterals that may have information, such as law enforcement.

#### 6555.1 Obtaining a Court Order to Gain Access

LPPH ~~December 2012~~ 6312-CCL DRAFT (moved item; was 6555)

Seeking a court order may be necessary to gain physical access to the operation.

Licensing may need to seek a court order to gain entry if other information discovered indicates that children are at risk for harm.

Licensing staff work with the Licensing attorney in DFPS Legal Services when a court order is necessary to interview a child or to gain access to an operation. Licensing staff also include the local district attorney’s office in this process.

See [6421.2](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6400.asp#LPPH_6421_2) Observing and Interviewing a Child Related to a Child Care Provider.

#### 6556 Requesting an Illegal Operation to Cease Operating

LPPH ~~December 2012~~ 6312-CCL DRAFT (moved item; was 6552)

Policy

If the investigator determines that the illegal operation poses an immediate risk to the health or safety of children, the investigator must ask the operation to cease operating immediately until the operation can obtain the appropriate permit. If the operation agrees to cease operating, the investigator contacts the parents or has the provider contact the parents to pick up the children immediately.

Circumstances that may require an illegal operation to cease operating include, but are not limited to, the following:

a. The number and ages of children in care exceeds the abilities of the provider to provide appropriate care and supervision

b. Structural damage to the home or operations makes the operation uninhabitable

c. Hazardous equipment or materials are present

d. The provider or household member has a criminal, central registry or sex offender match

Procedure

If the determination is made that an illegal operation should cease operating, the investigator follows the procedure outlined in [6332.4](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6332_4) Requesting That an Operation Cease Operating (Day Care Only)

#### 6557 Procedures When an Illegal Operation Is Determined to Be Not Subject to Regulation

LPPH ~~March 2013~~ 6312-CCL DRAFT (moved item; was 6553)

Procedure

If a report is received regarding an alleged illegal operation, the investigator first determines whether the operation is subject to regulation. See [2200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_2000.asp#LPPH_2200) Types of Child Care Permits and Multiple Operations.

If the operation is subject to regulation, the investigator continues the investigation. See [6400](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6400.asp#LPPH_6400) Conducting the Investigation.

If after conducting investigative actions, the investigator determines that the operation is not subject to regulation, the investigator notifies law enforcement, CPS, or other state agency with regulatory responsibility and administratively closes the investigation in the IMPACT and CLASS systems.

In IMPACT, the investigator:

• enters *Administrative Closure* for each allegation; and

• submits the investigation to the supervisor for closure.

In CLASS, the investigator:

a. documents the reason for closure in the *Explanation of the Disposition* box on the *Investigation Conclusion* page;

b. documents all contacts and marks each minimum standard that the investigator chose to evaluate as *Compliant* on the *Standards Details* page;

c. documents the recommended action as *No action*; and

d. closes the investigation.

### 6480 Worker Safety

6312-CCL DRAFT (new item)

Policy

Staff safety is one of the most important factors in any investigation or inspection. CCL staff must immediately leave any situation they feel is unsafe.

If a provider or another person shows any signs of physical or verbal hostility or aggression, staff should immediately leave the operation and not return unless and until circumstances indicate that returning to the operation would not pose a safety threat. Attempting to continue an investigation or inspection in these situations can escalate an unsafe situation.

A co-worker or supervisor should accompany staff on a return attempt to inspect or investigate the operation. If verbal or physical signs of hostility or aggressive behavior continue to be present, staff consult with their supervisor. If staff must return to complete necessary interviews or inspections, staff may contact law enforcement in order to ensure safety during the completion of the inspection or investigation. They may also contact DFPS Legal Services about getting a court order to assist the investigation. See Human Resources Code [§42.04412](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.04412).

*No law, policy, or local procedure requires CCL staff to enter or remain in a dangerous situation.*

*See* [SAFETY *central*](http://intranet.dfps.txnet.state.tx.us/Operations/Program_Support/Safety_Central/default.asp)on the DFPS Safety Net.

Procedure

The following best practices are steps that can be taken to help ensure worker safety in the field when conducting inspections and investigations:

a. Conduct team inspections if the operation is located in an area with a high rate of crime or if the inspection is conducted at night.

b. Upon arriving to the operation, ask the provider who else is in the operation at the time of the inspection.

c. Upon arriving to the operation, ask the provider to describe or show you the layout of the operation.

d. Ask the provider to lead the way during an inspection.

e. Update your Outlook calendar before each inspection or investigation activity with the operation name, operation number and your location (e.g. operation, school, or off-site meeting location).

f. Take your DFPS-issued phone with you to all inspections and investigation activities.

g. Enter you supervisor's phone number on speed dial.

h. Identify an agreed upon strategy with your supervisor for emergencies.

i. During the course of the inspection or investigation, if the provider or any other person displays inappropriate behavior or comments leave the operation or interview, report the incident to your supervisor, and return at another time with a coworker.