## 7600 Adverse Actions

LPPH ~~December 2009~~ DRAFT 8642-CCL (rev only)

Policy

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

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

DFPS Rules, 40 TAC [§745.8651](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8651) §[745.8875](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8875)

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

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

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

DFPS Rules, 40 TAC [§§745.8655](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8655) and [745.8609](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8609)

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

#### 7631 Notice of Intent to Deny, Revoke, or Suspend

LPPH ~~September 2012~~ DRAFT 8642-CCL (rev only)

Policy

The inspector consults with DFPS attorneys before notifying an operation or home about the intent to deny, revoke, or suspend.

No denial, revocation, or suspension is effective unless Licensing:

 • notified the permit holder or applicant in person or by both regular and certified mail about the alleged deficiencies warranting action; and

 • gave the permit holder or applicant an opportunity to retain the permit by showing compliance with Licensing statutes, administrative rules, and minimum standards.

Texas Government Code [§2001.054](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2001.htm#2001.054)

DFPS Rules, 40 TAC [§745.8609](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8609)

Procedure

The inspector sends the notification letter, CLASS Form 2880 *Intent to Impose Adverse Action*, to the permit holder or applicant to:

 • notify the permit holder or applicant about Licensing’s intent to deny, revoke, or suspend the permit; and

 • explain the basis for that action.

##### 7631.1 When Immediate Intervention Is Warranted at an Operation

LPPH ~~September 2012~~ DRAFT 8642-CCL (rev, num; old number 7631.9)

If circumstances at the operation are determined to be so extreme that immediate intervention is warranted, the inspector may make a referral for legal action (injunctive relief) simultaneously with the mailing of the notification letter (CLASS Form 2880 *Intent to Impose Adverse Action*).

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

##### 7631.2 Creating the Notification of Intent Letter

LPPH ~~September 2012~~ DRAFT 8642-CCL (new)

When preparing the notification letter, CLASS Form 2880 *Intent to Impose Adverse Action*, the inspector must:

a. Include a statement of intent to deny, revoke, or suspend the permit.

b. Include references to the legal authority for the adverse action taken:

 The authority is Human Resources Code [§42.072(a)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072). The Licensing 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)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.072)requires DFPS 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.

c. Include specific details of the findings or basis for denial, revocation, or suspension, including:

1. specific citation of statute, administrative rules, and minimum standards;

2. dates of the deficiencies;

3. description of each deficiency; and

4. the name of the inspector who made the determination.

d. Include information specific to the action taken. See:

 7631.21 Requirements if the Action Taken is Denial.

 7631.22 Requirements When the Operation is Already on Corrective Action or Suspension.

 7631.23 Requirements if the Action Taken is Revocation or Suspension and There is Risk to the Health or Safety of Children.

e. Include information notifying the operation about their requirements, rights, and restrictions. See:

 7631.24 Notifying an Operation About the Requirements For Informing the Public About an Adverse Action

 7631.25 Notifying an Operation About the Right to Request an Administrative Review

 7631.26 Notifying an Operation About the Restrictions on Reapplying for a Permit

 7631.27 Notifying an Operation About Restrictions on Controlling Persons

f. A statement that forms and letters from each inspection, investigation, or assessment used as a basis for the action are enclosed with the notice.

 The inspector prints and includes as enclosures copies of forms and letters from each of the inspections and investigations where deficiencies used as the basis for the adverse action are documented.

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

LPPH DRAFT 8642-CCL (new)

If the action taken is denial, the inspector:

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

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

###### 7631.22 Requirements When the Operation Has Been on Corrective Action or Suspension

LPPH DRAFT 8642-CCL (new)

Corrective Action

If the operation had been on corrective action, the inspector must include both of the following in the notification letter (CLASS Form 2880 *Intent to Impose Adverse Action*):

 • the date that the operation was placed on evaluation or probation; and

 • a statement that the conditions were not met, if applicable.

Suspension

If the operation had been on suspension, the notification must explain the corrections needed before the license or registration can be reinstated.

###### 7631.23 Requirements if the Action Taken is Revocation or Suspension and There is Risk to the Health or Safety of Children

LPPH ~~January 2013~~ DRAFT 8642-CCL (new)

If Licensing intends to revoke an operation's permit and determines that the operation poses an immediate risk to the health or safety of children, the inspector must also include the following information on CLASS Form 2880, *Intent to Impose Adverse Action* letter:

a. a statement explaining the risks, and that 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://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=751), for example:

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.

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://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8875)

Procedure

If the operation poses an immediate threat to the health or safety of children, the inspector provides 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).

The district director or designee changes the operation's main page in CLASS by selecting the check box *Do not display on public/provider website*.

###### 7631.24 Notifying an Operation About the Requirements For Informing the Public About an Adverse Action

LPPH ~~September 2012~~ DRAFT 8642-CCL (num, rev, ttl)

When preparing a notification letter (CLASS Form 2880 *Intent to Impose Adverse Action*), the inspector must include statements explaining the following.

Statement 1

Within five days of receiving the notification letter, the operation must notify the public about the adverse action by sending a copy of the adverse action letter by certified mail to each parent or managing conservator (one copy for each child currently enrolled in the operation).

Statement 2

The operation must post the adverse action in a prominent place near each public entrance, as required by DFPS Rules, 40 TAC [§745.8873](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8873), [§745.8655](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8655).

Statement 3

The operation must notify persons seeking to enroll a child that Licensing is seeking to deny, suspend, or revoke the permit.

Statement 4

The operation must give the inspector a copy of each return receipt (the green card) within five days after receiving return receipts generated by the letters operation staff sent by certified mail.

Texas Human Resources Code, [§42.077(d-1)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.077)

DFPS Rules, 40 TAC §§[745.8655](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8655); [745.8879](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8879)

The inspector follows up to ensure that the operation has:

 • notified the parents; and

 • sent the receipts to Licensing.

###### 7631.25 Notifying an Operation About the Right to Request an Administrative Review

LPPH ~~September 2012~~ DRAFT 8642-CCL (rev, num; currently 7631.5)

When preparing a notification letter (CLASS Form 2880 *Intent to Impose Adverse Action*), the inspector must include a statement that:

 • explains that the operation has a right to request an administrative review; and

 • explains the procedures for requesting a review, including:

 • whom to contact and where that person can be reached; and

 • that an administrative review must be requested within 15 days after receipt of the letter.

DFPS Rules, 40 TAC §§[745.8613](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8613); [745.8809-745.8817](http://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac_view=5&ti=40&pt=19&ch=745&sch=M&div=1&rl=Y)

###### 7631.26 Notifying an Operation About the Restrictions on Reapplying for a Permit

LPPH ~~September 2012~~ DRAFT 8642-CCL (rev, num; currently 7631.6)

When preparing a notification letter (CLASS Form *2880 Intent to Impose Adverse Action*), the inspector must include a statement that the permit holder or applicant whose permit has been denied or revoked may not apply for another permit before the fifth anniversary after the adverse action takes effect.

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

If the inspector denies a permit and the denial of the permit is upheld, the inspector applies a five-year restriction on reapplying.

If a sustained controlling person reapplies for a permit within five years from the date that the applicant was sustained, the inspector does not apply an additional five-year restriction. Applying within five years is not considered a substantial enough violation to warrant an additional five-year restriction.

###### 7631.27 Notifying an Operation About Restrictions on Controlling Persons

LPPH ~~September 2012~~ DRAFT 8642-CCL (rev, num; currently 7631.7)

When preparing a notification letter (CLASS Form 2880 *Intent to Impose Adverse Action*), the inspector must include a statement that when Licensing revokes a child care permit, controlling persons associated with the operation:

 • are designated as controlling; and

 • receive a letter offering an administrative review of that designation.

The inspector includes that a person’s designation as a controlling person is sustained when the revocation and the due process for a designated controlling person are final.

For five years after the designation is sustained, a sustained controlling person cannot:

 • obtain a permit to operate a child care operation; or

 • serve as a controlling person.

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

DFPS Rules, 40 TAC [§745.8873](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8873)

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

LPPH ~~January 2013~~ DRAFT 8642-CCL (rev, ttl, num; currently7631.8)

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://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8657)

###### 7631.31 When The Operation Is Required to Close Immediately

LPPH DRAFT 8642-CCL (new)

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; and

 • 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.

#### 7632 Administrative Review for Adverse Action

LPPH ~~September 2012~~ DRAFT 8642-CCL (ttl change only, no revision to content)

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

LPPH ~~January 2013~~ DRAFT 8642-CCL (rev, ttl)

Policy

If, after the opportunity for administrative review, Licensing decides to deny, revoke, or suspend an application or permit, the district director 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://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8609)

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

In addition, the inspector must notify other DFPS entities and update the operation’s status in CLASS. See:

7633.2 Notifying DFPS and Other State Agencies

7633.3 Updating the Operation’s Status in CLASS

##### 7633.1 Creating the Decision to Impose Adverse Action Letter

LPPH DRAFT 8642-CCL (new)

Procedure

The decision letter must include:

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.

d. The legal authority for the adverse action.

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

 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;

 • during a search for a controlling person; or

 • for the denial of a residential license.

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

e. A statement that the notification letter, CLASS Form 2880 *Intent to Impose Adverse Action*, was previously sent to the permit holder, explaining the basis for the action.

f. If the action taken is denial, the inspector:

 • leaves the checkbox stating that DFPS has determined the operation poses a risk to the health and safety of children unchecked; and

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

g. If appropriate, include a statement that the operation poses an immediate risk to the health or safety of children, and must discontinue operating immediately. See: 7633.11 Requirements if There is Immediate Risk to Children below.

h. Information about the operation’s other requirements, rights, and restrictions. See:

7633.12 Right to Appeal

7633.13 Notifying an Applicant Who Is Denied or Revoked About the Restrictions on Reapplying

7633.14 Notifying an Operation About a Controlling Person's Right to Request a Hearing

7633.15 Failure to Close the Operation

7633.16 Posting Requirements

###### 7633.11 Requirements if There is Immediate Risk to Children

LPPH ~~January 2013~~ DRAFT 8642-CCL (rev, ttl, num; current number 7633.1)

Procedure

If appropriate, the letter must include a statement that the operation poses an immediate risk to the health or safety of children. The inspector includes a statement that because of these risks, the operation must discontinue operating immediately 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://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=751). 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://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8875)

Procedure

The district director or designee 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.

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.

###### 7633.12 Right to Appeal

This is a numbering change only; no actual revision to the content was made.

###### 7633.13 Notifying an Applicant Who Is Denied or Revoked About the Restrictions on Reapplying

This is a numbering change only; no actual revision to the content was made.

###### 7633.14 Notifying an Operation About a Controlling Person's Right to Request a Hearing

This is a numbering change only; no actual revision to the content was made.

###### 7633.15 Failure to Close the Operation

This is a numbering change only; no actual revision to the content was made.

###### 7633.16 Posting Requirements

This is a numbering change only; no actual revision to the content was made.

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

LPPH ~~December 2009~~ DRAFT 8642-CCL (rev, num, ttl)

Procedure

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

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

##### 7633.3 Updating the Operation’s Status in CLASS

LPPH ~~July 2012~~ DRAFT 8642-CCL (rev, num, ttl)

*Procedure*

When Licensing suspends or revokes an operation’s permit, the inspector changes the operating status to *No* and updates the *Effective Date* to reflect the *Begin Date* of the suspension or revocation on the *Operation Main* page in CLASS.