

Regulations for All Types of Child Care in Texas

Texas Administrative Code _Title 40. Social Services and Assistance _Part 19. Department of Family and Protective Services _Chapter 745. Licensing _Subchapter A. Precedence and Definitions _Division 2. Definitions for the Language Used in This Chapter

40 TAC § 745.11
Tex. Admin. Code tit. 40, § 745.11

§ 745.11. What words must I know to understand this chapter?

The following words have the following meanings when used in this chapter:

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated or the context clearly indicates otherwise.

(2) We, us, our, and Licensing--The Licensing Division of the Texas Department of Family and Protective Services (DFPS).

40 TAC § 745.21
Tex. Admin. Code tit. 40, § 745.21

Yellow,
Red, &
Orange

§ 745.21. What do the following words and terms mean when used in this chapter?

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) Abuse--As defined in the Texas Family Code, § 261.401(1) (relating to Agency Investigation) and § 745.8557 of this title (relating to What is abuse?).

(2) Affinity--Related by marriage as set forth in the Government Code, § 573.024 (relating to Determination of Affinity).

(3) Capacity--The maximum number of children that a permit holder may care for at one time.

(4) Caregiver--A person whose duties include the supervision, guidance, and protection of a child or children.

Current through 39 Tex.Reg. No. 5000, dated June 27, 2014, as effective on or before June 30, 2014

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(5) Child--A person under 18 years old.

(6) Child-care facility--An establishment subject to regulation by Licensing which 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, for all or part of the 24-hour day, whether or not the establishment 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, listed family homes, or employer-based child care.

(7) Child day care--As defined in § 745.33 of this title (relating to What is child day care?).

(8) Child-placing agency (CPA)--A person, including an organization, other than the parents of a child who plans for the placement of or places a child in a child-care operation or adoptive home.

(9) Children related to the caregiver--Children who are the children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the caregiver, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(10) Consanguinity--Two individuals are related to each other by consanguinity if one is a descendant of the other; or they share a common ancestor. An adopted child is considered to be related by consanguinity for this purpose. Consanguinity is defined in the Government Code, § 573.022 (relating to Determination of Consanguinity).

(11) Contiguous operations--Two or more operations that touch at a point on a common border or located in the same building.

(12) Controlling person--As defined in § 745.901 of this title (relating to Who is a controlling person at a child-care operation?).

(13) Deficiency--Any failure to comply with a standard, rule, law, specific term of your permit, or condition of your evaluation, probation, or suspension.

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(14) Designated perpetrator--As defined in § 745.731 of this title (relating to What are designated perpetrators and sustained perpetrators of child abuse or neglect?).

(15) Division--The Licensing Division within the Texas Department of Family and Protective Services (DFPS).

(16) Employee--Any person employed by or that contracts with the permit holder, including but not limited to caregivers, drivers, kitchen personnel, maintenance and administrative personnel, and the center/program director.

(17) Endanger--To expose a child to a situation where physical or mental injury to a child is likely to occur.

(18) Exploitation--As defined in the Texas Family Code, § 261.401(2) (relating to Agency Investigation).

(19) Finding--The conclusion of an investigation or inspection indicating compliance or deficiency with one or more minimum standards or laws.

(20) Governing body--The entity with ultimate authority and responsibility for the operation.

(21) Governing body designee--The person named on the application as the designated representative of a governing body who is officially authorized by the governing body to speak for and act on its behalf in a specified capacity.

(22) Household member--An individual, other than the caregiver(s), who resides in an operation.

(23) Kindergarten age--As defined in § 745.101(1) of this title (relating to What words must I know to understand this subchapter?).

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(24) Licensed administrator--As defined in § 745.8905 of this title (relating to What is a licensed administrator?).

(25) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(26) Military spouse--A person married to a military service member who is currently on active duty.

(27) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(28) Minimum standards--The rules contained in Chapter 743 of this title (relating to Minimum Standards for Shelter Care), Chapter 744 of this title (relating to Minimum Standards for School-Age and Before or After-School Programs), Chapter 746 of this title (relating to Minimum Standards for Child-Care Centers), Chapter 747 of this title (relating to Minimum Standards for Child-Care Homes), Chapter 748 of this title (relating to Minimum Standards for General Residential Operations), Chapter 749 of this title (relating to Minimum Standards for Child-Placing Agencies), Chapter 750 of this title (relating to Minimum Standards for Independent Foster Homes), and Subchapter D, Division 11 of this chapter (relating to Employer-Based Child Care), which are minimum requirements for permit holders that are enforced by DFPS to protect the health, safety and well-being of children.

(29) Neglect--As defined in the Texas Family Code, § 261.401(3) (relating to Agency Investigation) and § 745.8559 of this title (relating to What is neglect?).

(30) Operation--A person or entity offering a program that may be subject to Licensing's regulation. 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, listed family home, or employer-based child care.

(31) Parent--A person that has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(32) Permit--A license, certification, registration, listing, compliance certificate, or any other written authorization granted by Licensing to operate a child-care facility, child-placing agency, listed family home, or employer-based child care. This also includes an administrator's license.

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(33) Permit holder--The person or entity granted the permit.

(34) Pre-kindergarten age--As defined in § 745.101(2) of this title (relating to What words must I know to understand this subchapter?).

(35) Program--Activities and services provided by an operation.

(36) Regulation--The enforcement of statutes and the development and enforcement of rules, including minimum standards. Regulation includes the licensing, certifying (both state run and employer-based operations), registering, and listing of an operation or the licensing of an administrator.

(37) Report--An expression of dissatisfaction or concern about an operation, made known to DFPS staff, that alleges a possible violation of minimum standards or the law and involves risk to a child/children in care.

(38) Residential child care--As defined in § 745.35 of this title (relating to What is residential child care?).

(39) State Office of Administrative Hearings (SOAH)--See § 745.8831 and § 745.8833 of this title (relating to What is a due process hearing? and What is the purpose of a due process hearing?).

(40) Sustained perpetrator--See § 745.731 of this title (relating to What are designated perpetrators and sustained perpetrators of child abuse or neglect?).

**40 TAC § 745.31
Tex. Admin. Code tit. 40, § 745.31**

§ 745.31. What operations does the Licensing Division regulate?

We regulate child day care and residential child care, including child-placing agencies, unless we determine your operation is exempt from regulation.

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40 TAC § 745.33

Tex. Admin. Code tit. 40, § 745.33

§ 745.33. What is child day care?

Child day care means the care, supervision, training, or education of:

(1) An unrelated child or children under 14 years old for less than 24 hours per day that occurs in a place other than the child's own home, including child day care provided to school-age children before and/or after the customary school day; or

(2) A related child or children under 14 years old for less than 24 hours per day that occurs in the caregiver's or child's home if the care is provided:

(A) Under the auspices of a listed family home; and

(B) In full compliance with Chapter 313 of the Labor Code, including providing care in the child's home only if:

(i) Care is provided for a disabled child, which may include the child's siblings;

(ii) Care is provided for a child under 18 months of age, which may include the child's siblings;

(iii) Care is provided for a child of a parent 18 years or younger;

(iv) Care is provided for a child of a parent 19 years of age and the parent is fully enrolled in a secondary school in a program leading toward a high school diploma;

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(v) Care is provided when the parent's work schedule necessitates child-care services during the evening, overnight, or on the weekend and taking the child outside of the child's home would be disruptive to the child; or

(vi) The Texas Workforce Commission determines that other child-care provider arrangements are not available in the community.

40 TAC § 745.35
Tex. Admin. Code tit. 40, § 745.35

§ 745.35. What is residential child care?

Residential child care means the care, custody, supervision, assessment, training, education, or treatment of a child who is not related by blood, marriage, or adoption to the owner or operator of the operation, for all of the 24-hour day, regardless of whether the operation is operated for profit or charges for the services it offers.

40 TAC § 745.37
Tex. Admin. Code tit. 40, § 745.37

§ 745.37. What specific types of operations does Licensing regulate?

The charts in paragraphs (1), (2), and (3) of this section list the types of operations for child day care and residential child care that we regulate. Child-placing agencies and foster homes verified by a child-placing agency are included in the residential child-care chart.

(1) Types of Child Day-Care Operations before September 1, 2003.

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Figure: 40 TAC §745.37(1)

Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	A caregiver at least 18 years old that provides care in her own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least four hours a day, three or more days a week, and more than nine consecutive weeks. The total number of children in care, including children related to the caregiver, may not exceed 12.	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Family Home	A caregiver who provides care in her own home for four to six children, birth through 13 years. Child day care can be provided for six additional school-aged children before and/or after the customary school day. The total number of children in care, including children related to the caregiver, may not exceed 12.	Registration
(C) Group Day-Care Home	An operation that provides care for seven to 12 children, birth through 13 years.	License
(D) Day-Care Center	An operation that provides care for 13 or more children, birth through 13 years.	License
(E) Drop-in Care Center	An operation that provides care for children, birth through 13 years. It does not provide care for the same child for more than five consecutive days or for more than 15 days in one calendar month.	License
(F) School: Kindergarten and Above	An operation that provides an educational program in one or more grades for children ages four through 13 years. The school operates only during the customary public school day.	License
(G) Kindergarten and Nursery School	An operation that provides an educational program that is four hours or less per day and more than two days a week for children two through six years.	License

(2) Types of Child Day-Care Operations on and after September 1, 2003.

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Figure: 40 TAC §745.37(2)

Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	<p>A caregiver at least 18 years old that provides care in her own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least:</p> <p>(i) four hours a day, three or more days a week, for three or more consecutive weeks; or</p> <p>(ii) four hours a day for 40 or more days in a period of 12 months.</p> <p>The total number of children in care, including children related to the caregiver, may not exceed 12.</p>	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Child-Care Home	<p>The primary caregiver provides regular care in the caregiver's own residence for not more than six children from birth through 13 years, and may provide care after school hours for not more than six additional elementary school children. The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.</p>	Registration
(C) Licensed Child-Care Home	<p>The primary caregiver provides care in the caregiver's own residence for children from birth through 13 years. The total number of children in care varies with the ages of the children, but the total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.</p>	License
(D) Child-Care Center	<p>An operation providing care at a location other than the permit holder's home, for seven or more children under 14 years of age, for less than 24 hours per day, but at least two hours a day, three or more days a week.</p>	License
(E) Employer-Based Child Care	<p>A small employer providing care for up to 12 of the employees' children that are under 14 years of age, for less than 24 hours per day. The care is located on the employer's premises and in the same building where the parents work.</p>	Compliance Certificate

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(F) Shelter Care	A child care program at a temporary shelter, such as a family violence or homeless shelter, providing care for seven or more children under 14 years of age while the resident parent is away from the shelter. The child care program operates for at least four hours a day three days a week.	Compliance Certificate
(G) Before or After-School Program	An operation that provides care before, or after, or before and after, the customary school day and during school holidays, for at least two hours a day and three days a week, to children who attend pre-kindergarten through grade six.	License
(H) School-Age Program	An operation that provides supervision and recreation, skills instruction, or skills training for at least two hours a day and three days a week to children attending pre-kindergarten through grade six. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session.	License

(3) Types of Residential Child-Care Operations.

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Figure: 40 TAC §745.37(3)

Residential Child Care Operations	Description	Type of Permit
(A) Foster Family Home (Independent)	An operation that provides care for six or fewer children up to the age of 18 years.	License
(B) Foster Group Home (Independent)	An operation that provides care for seven to 12 children up to the age of 18 years.	License
(C) General Residential Operation	An operation that provides child care for 13 or more children up to the age of 18 years. The care may include treatment services. Residential treatment centers are a type of general residential operation.	License
(D) Child-Placing Agency (CPA)	A person, agency, or organization other than a parent who places or plans for the placement of a child in an adoptive home or other residential care setting.	License
(E) Child-Placing Agency Foster Family Home	An operation that provides care for six or fewer children, up to the age of 18 years, under the regulation of a child-placing agency.	Verification (The CPA issues this. A CPA regulates its own foster family homes.)
(F) Child-Placing Agency Foster Group Home	An operation that provides care for seven to 12 children, up to the age of 18 years, under the regulation of a child-placing agency.	Verification (The CPA issues this. A CPA regulates its own foster group homes.)

40 TAC § 745.39
Tex. Admin. Code tit. 40, § 745.39

§ 745.39. Does Licensing regulate state agencies that run child-care operations?

Yes. While state agencies that run non-exempt operations do not have to obtain a license from us, they must obtain a certificate. We will monitor the operation on a regular basis for compliance with minimum standards.

40 TAC § 745.41
Tex. Admin. Code tit. 40, § 745.41

§ 745.41. How do I start a child day care or residential child-care operation, including a child-placing agency?

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You must apply for a permit, unless we determine you are exempt from regulation. See more about applying for a permit in Subchapter D of this chapter (relating to Application Process). See more about being exempt from regulation in Subchapter C of this chapter (relating to Operations that are Exempt from Regulation).

**40 TAC § 745.101
Tex. Admin. Code tit. 40, § 745.101**

§ 745.101. What words must I know to understand this subchapter?

These words have the following meanings:

- (1) Kindergarten age--At least five years of age on September 1.
- (2) Pre-kindergarten age--Three and four years of age.
- (3) Nearby--A person is in the same building, across the street from, or in the same city block as the operation.

**40 TAC § 745.111
Tex. Admin. Code tit. 40, § 745.111**

§ 745.111. What does "exempt from regulation" mean?

You can operate your program legally without receiving a license from us. We do not require you to comply with our statutes, rules, and standards.

**40 TAC § 745.113
Tex. Admin. Code tit. 40, § 745.113**

§ 745.113. What programs are exempt from regulation by Licensing?

The programs exempt from regulation by Licensing fall into four categories:

- (1) Certain programs and facilities regulated by other government entities:**

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(2) Programs of limited duration;

(3) Educational facilities and programs; and

(4) Miscellaneous programs.

40 TAC § 745.115
 Tex. Admin. Code tit. 40, § 745.115

§ 745.115. What programs regulated by other governmental entities are exempt from Licensing regulation?

The following programs and facilities are exempt from our regulation:

Figure: 40 TAC §745.115

Governmental Entity	Description of Exempt Programs
(1) Federal	A facility operated on a federal installation, including military bases and Indian reservations.
(2) State	(A) A facility operated by the Texas Juvenile Justice Department; (B) A facility providing services solely for the Texas Juvenile Justice Department; (C) Any other correctional facility for children operated or regulated by another state agency or political subdivision; (D) A treatment facility or structured program for treating chemically dependent persons that is licensed by the Department of State Health Services; (E) A youth camp licensed by the Department of State Health Services; and (F) A youth camp exempt from licensure by the Department of State Health Services under the Health and Safety Code, §141.0021, because it is: (1) Operated by or on "a campus of an institution of higher education" or "a private or independent institution of higher education," as those terms are defined in the Education Code, §61.003; and (2) Regularly inspected by a local governmental entity for compliance with health and safety standards.
(3) Municipal	A recreation program for elementary age (5-13 years) children with the following criteria: (A) A municipality operates the program; (B) The governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, although the governing body of a municipality with a population of at least 300,000 that has adopted standards by ordinance after public hearings at least twice may accept public comment through its Internet website for at least 30 days in lieu of having a public hearing; (C) The program provides these standards to the parents of each program participant; (D) The ordinances include child/caregiver ratios, minimum employee qualifications, minimum building, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; (E) The program informs the parents that the state does not license the program; and (F) The program does not advertise itself as a child-care operation.

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40 TAC § 745.117

Tex. Admin. Code tit. 40, § 745.117

§ 745.117. Which programs of limited duration are exempt from Licensing regulation?

The following programs of limited-duration are exempt from our regulation:

Figure: 40 TAC §745.117

Program of Limited Duration	Criteria for Exemption
(1) Parents on the Premises	(A) The program operates in association with a shopping center, business, and other activities such as retreats or classes for religious instruction; (B) The program does not advertise as a child-care facility or day-care center and informs parents that it is not licensed by the state; (C) The parent or person responsible for the child attends or engages in some elective activity nearby, part-time employees or contractors who conduct the elective activity may use the program meeting the limits stated in subparagraph (D) of this part of the chart. A caregiver for the program may use the program for the caregiver's own children as long as the child remains with a caregiver; (D) A child may only be in care for up to four and one half hours per day and: (i) For up to 12 hours per week; or (ii) For up to 15 hours per week if care is provided so a person may attend an educational class provided by a nonprofit entity, and the program is in a county with a population of 800,000 or more and the county is adjacent to an international border; and (E) The program's caregivers must be able to contact the parent or person responsible for the child at all times.
(2) Short-Term Program	(A) The program operates for less than three consecutive weeks and less than 40 days in a period of 12 months; and (B) It is not a part of an operation subject to our regulation.
(3) Religious Program	(A) It is a program of religious instruction such as Sunday school or weekly catechism; or (B) It is a religious program that lasts two weeks or less.
(4) Foreign Exchange/Sponsorship Program	(A) It is a living arrangement in a caretaker's home where: (i) An unrelated child or sibling group lives in the person's home; (ii) Each child is in the United States on a time-limited visa; and (iii) Each child is under the sponsorship of the person with whom they are living or the sponsorship of some organization.

40 TAC § 745.119

Tex. Admin. Code tit. 40, § 745.119

§ 745.119. What educational facilities are exempt from Licensing regulation?

The following educational facilities and programs are exempt from our regulation:

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Figure: 40 TAC §745.119

Educational Facility	Criteria for Exemption
(1) Accredited Educational Facility For Grades Pre-Kindergarten and Above	(A) The educational facility operates primarily for educational purposes; (B) The educational facility operates the program; (C) All children in the program are at least pre-kindergarten age; and (D) The Texas Education Agency (TEA) or the Southern Association of Colleges and Southern Association of Colleges and Schools (SACS) accredits the educational facility; or the Texas Private School Accreditation Commission (TEPSAC) accredits the educational facility. Note: For educational facilities that also provide residential child care, See §745.125 of this title (relating to Are additional exemption criteria required for an educational facility that provides residential child care?).
(2) Before and/or After-School Child Day-Care Operated by an Accredited Educational Facility	(A) TEA, SACS, or TEPSAC accredits the educational facility; (B) The educational facility operates the child day-care program; and (C) All children in the program are at least pre-kindergarten age.
(3) Before and/or After-School Child Day-Care Operated by a Contracted Entity	(A) TEA, SACS, or TEPSAC accredits the educational facility; (B) The accredited educational facility contracts with an entity to operate the before and/or after-school child day care; (C) All children in the program are at least pre-kindergarten age; and (D) TEA, SACS, or TEPSAC approves the curriculum content of the before and after-school child day care.
(4) Educational Facility that is a Member of an Organization Requiring Compliance with Standards	(A) The educational facility must provide an educational program from grades pre-kindergarten through at least grade two; (B) All children in the program are at least pre-kindergarten age; (C) The educational facility provides child day care no more than one hour before and one hour after the customary school day in the community; and (D) The educational facility is a member of an organization that either: (i) publishes health, safety, fire, and sanitation standards equal to those required by the state, county, or municipality; or (ii) follows the state, county, or municipal health, safety, and fire codes.
(5) Private Educational Facility, Including an Educational Facility that is Religious in Nature	(A) The educational facility offers an educational program; (B) No more than two hours total of child day care is provided before or after the customary school day in the community; and (C) It operates one or more of the following: (i) Pre-kindergarten through at least grade three; (ii) Grades 9 through 12; or (iii) The same pattern of public school grade clustering as the local school district elementary grades (1 through 6).

40 TAC § 745.121

Tex. Admin. Code tit. 40, § 745.121

§ 745.121. What if my educational facility meets every criterion for an education exemption, except some of the children in care are younger than the exemption allows?

You must obtain a permit for the portion of your program caring for children younger than the exemption allows.

40 TAC § 745.123

Tex. Admin. Code tit. 40, § 745.123

§ 745.123. What if my educational facility meets every criterion for an education exemption, except some of the children in care stay in care longer than the number of hours the exemption allows?

You must obtain a permit for the portion of your program caring for children longer than the number of hours the exemption allows.

40 TAC § 745.125

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Tex. Admin. Code tit. 40, § 745.125

§ 745.125. Are additional exemption criteria required for an educational facility that provides residential child care?

Yes, if your educational facility offers residential child care, then you must meet the criteria in § 745.119 of this title (relating to What educational facilities are exempt from Licensing regulation?) and the following additional criteria to be exempt from our regulation:

(1) Parents must retain primary responsibility for financial support, health problems, or serious personal problems of the students; and

(2) The provision of residential child care must be solely for the purpose of facilitating the student's participation in the educational program and must not exist apart from the educational aspect of the facility.

40 TAC § 745.127

Tex. Admin. Code tit. 40, § 745.127

§ 745.127. What does an accrediting organization need to submit to Licensing to determine exemption from regulation for its educational facilities under § 745.119(4) of this title (relating to What educational facilities are exempt from Licensing regulation?)?

The organization to which educational facilities belong must send the following to us:

(1) Documentation that the organization has its own health, safety, fire, and sanitation standards that are equal to those required for licensed operations, or documentation that the organization requires members to comply with state, county, or municipal health, safety, fire, and sanitation codes;

(2) A plan to ensure that members comply with either the health, safety, fire, and sanitation standards of the organization or the health, safety, and fire codes of the state, county, or municipality. We must review the monitoring plan of the organization; and

(3) A list of names and addresses of current members. This list must be updated when new members are accredited or educational facilities cease to be members.

40 TAC § 745.129

Tex. Admin. Code tit. 40, § 745.129

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§ 745.129. What miscellaneous programs are exempt from Licensing regulation?

The following miscellaneous programs are exempt from our regulation:

Figure: 40 TAC §745.129

Exempt Miscellaneous Programs	Criteria for Exemption
(1) Neighborhood Recreation Program	<p>(A) The program provides activities designed for recreational purposes for children ages 5-13;</p> <p>(B) The governing body of the program must adopt standards for care. At a minimum, these standards must include staffing ratios, staff training, and health and safety standards and mechanisms for monitoring, enforcing the standards, and receiving and resolving complaints from parents of the enrolled children;</p> <p>(C) The program does not accept any compensation other than a nominal annual membership fee. The program does not solicit donations as payment for services or goods provided as part of the program;</p> <p>(D) The program is organized as a non-profit organization or is located at the participant's residence;</p> <p>(E) The program must inform each parent that Licensing does not regulate the operation;</p> <p>(F) The program does not advertise or represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services; and</p> <p>(G) The program conducts background checks using information that is obtained from the Department of Public Safety for all program employees and volunteers who work with children.</p>
(2) Skills Program	<p>(A) The program offers direct instruction in a single skill, talent, ability, expertise, or proficiency;</p> <p>(B) The program does not provide or offer services that are not directly related to a single skill, talent, ability, expertise, or proficiency, but may offer transportation and snacks;</p> <p>(C) The program does not advertise or represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;</p> <p>(D) The program informs parents that the program is not licensed by the state;</p> <p>(E) The program informs parents of the physical risk a child may face while participating in the program; and</p> <p>(F) The program conducts background checks using information that is obtained from the Department of Public Safety for all program employees and volunteers who work with children.</p>
(3) Caregiver Has Written Agreement with a Parent to Provide Residential Care	<p>(A) A child or sibling group may live with someone other than a relative if the non-relative caregiver does not care for more than one unrelated child or sibling group;</p> <p>(B) The caregiver had a prior relationship with the child, sibling group, or other family members of the child or sibling group;</p> <p>(C) The caregiver does not receive compensation or solicit donations for the care of the child or sibling group; and</p> <p>(D) The caregiver has a written agreement with the parent to care for the child or sibling group.</p>

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(4) Emergency Shelter for Minors	(A) The shelter does not otherwise operate as a child-care facility that must have a license from DFPS; (B) The shelter is providing shelter or care to a minor and the minor's child or children, if any; (C) The shelter provides care for the minor and the minor's child or children only when there is an immediate danger to the physical health or safety of the minor or the minor's child or children; (D) The shelter does not provide care for more than 15 days unless: (1) The minor consents to shelter or care to be provided to the minor or the minor's children and is: (i) 16 years of age or older, resides separate and apart from the minor's parent, and manages the minor's own financial affairs; or (ii) Unmarried and is pregnant or is the parent of a child; or (2) The minor has qualified for Temporary Assistance for Needy Families and is on the waiting list for housing assistance; and (E) The shelter is: (1) Currently under contract with a state or federal agency for the provision of shelter or care to children; or (2) A family violence center that meets the requirements listed under Human Resources Code §51.005(b)(3), as determined by the Health and Human Services Commission.
(5) Child or Sibling Group Placed By DFPS	(A) The caregiver has a longstanding and significant relationship with the child or sibling group; (B) DFPS is the managing conservator of the child or sibling group; and (C) DFPS placed the child or sibling group in the caregiver's home.
(6) Food Distribution Program	(A) The program serves an evening meal to children two-years-old or older; and (B) The program is operated by a non-profit food bank in a non-profit, religious, or educational facility for not more than two hours a day on regular business days.
(7) Emergency Shelter for Human Trafficking	(A) The shelter does not otherwise operate as a child-care facility that is required to have a license from DFPS; (B) The shelter is operated by a nonprofit organization; (C) The shelter provides shelter and care for no more than 15 days to alleged victims of human trafficking as defined in Penal Code §20A.02, who are 13-17 years old; and (D) The shelter is located in a municipality with a population of at least 600,000 that is in a county on an international border; and: (1) Is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or (2) Is a family violence center that meets the requirements listed under Human Resources Code §51.005(b)(3), as determined by the Health and Human Services Commission.

40 TAC § 745.131
Tex. Admin. Code tit. 40, § 745.131

§ 745.131. How do I request an exemption?

You must submit a description of the program on a form we provide. You must also submit additional documentation to verify that your program meets the criteria required for an exemption. If you think your educational facility is exempt under the provisions of § 745.119(1), (2), or (3) of this title (relating to What educational facilities are exempt from Licensing regulation?), then you may contact us to determine whether you need to complete an exemption form.

40 TAC § 745.133
Tex. Admin. Code tit. 40, § 745.133

§ 745.133. When will I know if my program is exempt?

We must notify you within 21 days after we receive all of the information necessary for us to review whether your

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program meets all exemption criteria. If the information you submit does not satisfy the exemption criteria, we may request additional documentation or visit your program to gain additional information so that we may determine whether your program meets the criteria for exemption.

**40 TAC § 745.135
Tex. Admin. Code tit. 40, § 745.135**

§ 745.135. What if Licensing determines that my program does not meet the exemption criteria outlined in this subchapter?

If we determine that your program does not meet all criteria for exemption, we will send you a letter stating that you must apply for a permit. If your program does not meet the exemption criteria outlined in this subchapter, you must take immediate steps to follow Licensing instructions to apply for a permit. We will give you written instructions about submitting an application within certain time frames. You will be operating illegally if you continue to operate without meeting Licensing requirements. We may file suit in district court for both a civil penalty and injunctive relief if you knowingly engage in activities that require a license or registration.

**40 TAC § 745.137
Tex. Admin. Code tit. 40, § 745.137**

§ 745.137. What if I disagree with Licensing's determination that my program is not exempt?

You may request an administrative review if you disagree with the determination. See Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

**40 TAC § 745.139
Tex. Admin. Code tit. 40, § 745.139**

§ 745.139. What will Licensing do if I operate a combination of exempt and regulated programs?

If the programs are separate, each program that meets the criteria for an exemption is exempt. If they are not separate, then they are all subject to our regulation. To demonstrate that the programs are separate, you must show that the programs:

(1) Have separate caregivers or have caregivers that do not provide care to more than one program at the same time; and

(2) Do not use the same building or areas at the same time, except that the programs may share restrooms and indoor/outdoor activity areas if you have a written plan regarding how caregivers from each program will supervise children using shared spaces.

**40 TAC § 745.141
Tex. Admin. Code tit. 40, § 745.141**

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§ 745.141. In what circumstances may I apply for a permit even though my program is exempt?

You may apply for a permit if you must have one for your program to receive public funding. If we issue you a permit, then you must comply with all statutes, rules, and minimum standards that apply to that permit.

**40 TAC § 745.143
Tex. Admin. Code tit. 40, § 745.143**

§ 745.143. If my program is exempt and does not need regulation for funding purposes, can I still obtain a permit from Licensing?

No, if your program is exempt and we do not regulate it under § 745.141 of this title (relating to In what circumstances may I apply for a permit even though my program is exempt?), we will not issue you a permit.