



TO: Health and Human Services Executive Council
DATE: September 23, 2016
FROM: Hank L. Whitman, DFPS Commissioner

AGENDA ITEM: 3.i

SUBJECT: DFPS Minimum Standards for School-Age and Before or After-School Programs, related to a comprehensive review

BACKGROUND: Federal Requirement Legislative Requirement Other

The Child Care Licensing (CCL) Division proposes to amend 40 TAC, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs (operations). Texas Human Resources Code (HRC) §42.042(b) requires CCL to conduct a comprehensive review of all rules and minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 744.

During this review of standards, CCL's goal was to review the concerns of child advocacy groups, operations, children, and parents and to formulate standards that balance children's health and safety with affordability and availability of care.

In preparation for the review of minimum standards, CCL conducted a web-based survey open to permit holders, caregivers, advocates, parents, CCL staff, and anyone in the general public interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 31 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about proposed changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received more than 1,200 comments relating to Chapters 745 (Licensing), 744, 746 (Minimum Standards for Child-Care Centers, and 747 (Minimum Standards for Child-Care Homes) from stakeholders for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations that were then presented to a temporary workgroup. The temporary workgroup was comprised of approximately 15 participants, including providers from child-care centers, a provider from a school-age and before- and after-school program, a parent, representatives from Licensing, and a representative from the Texas Workforce Commission. The workgroup had an introductory meeting on March 22, 2016, and subsequently met twice on April 5, 2016 and May 16, 2016 to review and provide comments regarding the recommended changes to Chapter 744 (and Chapters 746 and 747).

In response to the comments received, DFPS is recommending amending/repealing/adding over 125 minimum standards in Chapter 744. In addition to responding to comments, three other

primary goals of this comprehensive review were to (1) make the language of the rules consistent throughout the chapter, (2) delete minimum standards or portions of minimum standards that are duplicative or redundant, and (3) combine minimum standards when appropriate. The last two goals resulted in the deletion of approximately 20 minimum standards. Below is a broad overview of some of the different areas and types of changes that DFPS is recommending:

- Repealing, adding, moving, and modifying definitions. One example is the repeal of §§744.2509 and 744.2511 which defined "sanitizing" and "disinfecting solution" and combining, modifying, and updating these definitions into one definition for "sanitize" and adding it the New §744.123(46);
- Reorganizing Subchapter A by creating three new Divisions: Purpose, Scope, and Definitions. The focus of the reorganization is to provide better clarity and continuity;
- Updating or deleting outdated rules or language in the rules, including:
 - Deleting outdated grandfather clauses (§§744.1019 and 744.3255) and outdated wording ("coin operated pay phone" in §744.3051 and "message pagers" in §744.3821);
 - Updating the immunization minimum standards to be consistent with the current Department of State Health Services rules (§§744.613, 744.615, 744.617, 744.619, 744.621 and 744.623); and
 - Deleting the use of rectal thermometers and allowing the use of tympanic (ear) thermometers (§744.2571);
- Clarifying confusing concepts by:
 - Adding a new rule §744.1401 by deleting, combining, and modifying previous §744.1401 and §744.1403 to explain when substitutes, volunteers, and contractors must comply with the minimum standards that apply to employees and caregivers; and
 - Adding a rule that a sick child may return to care when there is a doctor's statement that the child no longer has the excludable condition, or the child is free of symptoms for 24 hours (§744.2576);
- Strengthening the minimum standards when it is necessary for the safety of children, for example:
 - Requiring a written oversight plan until a site director meets the required education qualifications (§744.1017(c)(2));
 - Requiring televisions to be anchored, so they cannot tip over (§744.2601); and
 - Banning the use of e-cigarettes and any type of vapors (§744.2603); and
- Allowing more discretion by providers while still ensuring the safety of children, for example:
 - Allowing first aid (but not CPR) to be obtained through self-instructional training (§744.1315); and
 - Allowing the use of hand sanitizers (§744.2520).

ISSUES AND ALTERNATIVES:

While comments regarding the comprehensive review of Chapter 744 are anticipated, the comments are not anticipated to be controversial or high profile. Once the comments are received, DFPS will review and make recommendations regarding changes that are needed.

STAKEHOLDER INVOLVEMENT:

As noted in more detail in the Background and Purpose, the comprehensive review has included a:

- Web-based survey that was available for submission of comments from August - December 2014;
- Series of 31 forums to solicit additional input were held between September - November 2015; and
- Temporary workgroup comprised of providers, advocates, a parent, and CCL and TWC staff that met on April 5 and May 16 of 2016.

FISCAL IMPACT: No fiscal impact for state and local government, but there is a fiscal impact for on small and micro businesses. The information related to the fiscal impact for small and micro businesses was added to the Services Impact Statement.

None

SERVICES IMPACT STATEMENT:

Impact on Business. The only anticipated adverse impact on small or micro businesses is as a result of the proposed rule change to §744.501. The proposed change will impact licensed operations that meet the definition of a small and micro-business. According to the DFPS FY 2015 Annual Report and Data Book as of August 31, 2015 there were 1,551 licensed School-Age and Before or After-School Programs (operations) in Texas.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business. Based on a 2010 survey conducted by CCL, it is estimated that 55% (or 853) are for profit businesses. Of those 853 operations, it is estimated that 98% (or 836) have fewer than 100 employees. Of the 836 operations, it is estimated that 68% (or 568) have fewer than 20 employees. So it is estimated that 836 operations are small business, and 568 operations are micro-businesses.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for the rule that is projected to have a fiscal impact.

For School-Age and Before or After-School Programs, the staff time required to comply with the standards will impact Directors. For use in this impact analysis, DFPS will use the following mean wages that were obtained from the Texas Workforce Commission's website for Occupational Wages based on 2015 estimates: For all Directors, DFPS is using a \$25.57 per hour mean wage from the Occupational Title of Education Administrator, Preschool and Childcare Center.

Fiscal Impact for Proposed §744.501: This section adds two new operational policies that must be developed: suspension and expulsion of children; and procedures for providing and applying insect repellent and sunscreen. The fiscal impact to these operations results from staff time to develop policy regarding these three topics. It is anticipated, after discussing this issue with the temporary workgroup, that a Director, or curriculum developer that is similarly paid, will spend an average of one to three hours developing these three operational policies. Therefore, the approximate one-time cost for the development of these two operational policies is between \$25.57 (1 hour X \$25.57) and \$76.71 (3 hours X \$25.57).

The other recommended rule changes should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

Regulatory Flexible Analysis: As previously noted, of the 1,551 School-Age and Before or After-School Programs, it is estimated that 836 of them are small business, and 568 of them are micro-businesses. The projected fiscal impact on small and micro-businesses for §744.501 is addressed in the foregoing section. DFPS did consider not requiring each of the two new operational policies, but ultimately decided that the one-time cost is appropriately small and merited the changes. These two new operational policies will ensure the health and safety of children and prevent the inappropriate removal of children from operations.

RULE DEVELOPMENT SCHEDULE:

September 2016	Present to HHSC Executive Council
October 2016	Publish proposed rule in the <i>Texas Register</i>
December 2016	Publish adopted rule in the <i>Texas Register</i>
March 2017	Effective date

REQUESTED ACTION:

- The Council recommends that the proposed rule be published in the *Texas Register* and later adopted should there be no substantive comment.

- Information Only

TITLE 40	SOCIAL SERVICES & ASSISTANCE
PART 19	DEPT. OF FAMILY AND PROTECTIVE SERVICES
CHAPTER 744	MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS
SUBCHAPTER A	PURPOSE AND DEFINITIONS
SUBCHAPTER B	ADMINISTRATION AND COMMUNICATION
DIVISION 1	PERMIT HOLDER RESPONSIBILITIES
DIVISION 2	REQUIRED NOTIFICATIONS
DIVISION 3	REQUIRED POSTINGS
DIVISION 4	OPERATIONAL POLICIES
SUBCHAPTER C	RECORD KEEPING
DIVISION 1	RECORDS OF CHILDREN
DIVISION 2	RECORDS FOR ACCIDENTS AND INCIDENTS
DIVISION 3	RECORDS THAT MUST BE KEPT ON FILE AT THE OPERATION
DIVISION 4	PERSONNEL RECORDS
SUBCHAPTER D	PERSONNEL
DIVISION 1	DIRECTOR
DIVISION 2	EMPLOYEES AND CAREGIVERS
DIVISION 3	GENERAL RESPONSIBILITIES FOR PERSONNEL
DIVISION 4	PROFESSIONAL DEVELOPMENT
DIVISION 5	VOLUNTEERS, SUBSTITUTES, AND PERSONS UNDER CONTRACT
SUBCHAPTER F	DEVELOPMENTAL ACTIVITIES AND EQUIPMENT
DIVISION 1	ACTIVITIES AND ACTIVITY PLANS
SUBCHAPTER G	DISCIPLINE AND GUIDANCE
SUBCHAPTER H	NAPTIME
DIVISION 1	NAPTIME
SUBCHAPTER I	FIELD TRIPS
SUBCHAPTER J	NUTRITION AND FOOD SERVICE
SUBCHAPTER K	HEALTH PRACTICES
DIVISION 1	ENVIRONMENTAL HEALTH
DIVISION 2	TOILETING
DIVISION 3	ILLNESS AND INJURY
SUBCHAPTER L	SAFETY PRACTICES
DIVISION 1	SAFETY PRECAUTIONS
DIVISION 2	MEDICATIONS AND MEDICAL ASSISTANCE
DIVISION 3	ANIMALS AT THE OPERATION
SUBCHAPTER M	PHYSICAL FACILITIES
DIVISION 1	INDOOR SPACE REQUIREMENTS
DIVISION 3	TOILETS AND SINKS
DIVISION 4	TELEPHONE
SUBCHAPTER N	INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT
DIVISION 1	MINIMUM SAFETY REQUIREMENTS
DIVISION 3	USE ZONES
DIVISION 4	SURFING

DIVISION 6	INFLATABLES
SUBCHAPTER O	SWIMMING POOLS, AND WADING/SPLASHING POOLS, AND SPRINKLER PLAY
SUBCHAPTER P	FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 1	FIRE INSPECTION
DIVISION 2	EMERGENCY PREPAREDNESS
DIVISION 3	FIRE EXTINGUISHERS AND SMOKE DETECTION SYSTEMS
DIVISION 6	CARBON MONOXIDE DETECTION SYSTEMS
SUBCHAPTER Q	TRANSPORTATION

PROPOSED PREAMBLE

The Texas Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), proposes amendments to §§744.101, 744.201, 744.301, 744.303, 744.305, 744.401, 744.405, 744.501, 744.503, 744.505, 744.603, 744.605, 744.613, 744.623, 744.627, 744.705, 744.801, 744.803, 744.909, 744.1001, 744.1003, 744.1015, 744.1017, 744.1023, 744.1035, 744.1037, 744.1051, 744.1053, 744.1055, 744.1103, 744.1105, 744.1107, 744.1203, 744.1315, 744.1317, 744.1319, 744.1321, 744.1325, 744.2001, 744.2005, 744.2103, 744.2105, 744.2207, 744.2211, 744.2409, 744.2411, 744.2413, 744.2501, 744.2505, 744.2515, 744.2519, 744.2551, 744.2571, 744.2573, 744.2577, 744.2601, 744.2603, 744.2607, 744.2609, 744.2651, 744.2701, 744.2905, 744.2907, 744.3003, 744.3007, 744.3051, 744.3101, 744.3107, 744.3111, 744.3209, 744.3251, 744.3255, 744.3351, 744.3413, 744.3505, 744.3561, 744.3605, 744.3607, 744.3619, 744.3757, 744.3801, 744.3805, 744.3807, 744.3817, and 744.3821; the repeal of §§744.103, 744.105, 744.107, 744.109, 744.507, 744.615, 744.617, 744.619, 744.621, 744.703, 744.903, 744.905, 744.1019, 744.1029, 744.1031, 744.1033, 744.1039, 744.1041, 744.1101, 744.1111, 744.1301, 744.1327, 744.1401, 744.1403, 744.2101, 744.2111, 744.2113, 744.2115, 744.2305, 744.2509, 744.2511, 744.3109, and 744.3409; and new §§744.111, 744.113, 744.121, 744.123, 744.615, 744.1029, 744.1301, 744.1401, 744.2520, 744.2576, and 744.3109 in Chapter 744, concerning Minimum Standards for School-Age and Before or After-School Programs. The purpose of the amendments, repeals, and new sections is to implement Texas Human Resources Code (HRC) §42.042(b), which requires CCL to conduct a comprehensive review of all rules and minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 744.

BACKGROUND AND JUSTIFICATION

During this review of standards, CCL's goal was to review the concerns of child advocacy groups, operations, children, and parents and to formulate standards that balance children's health and safety with affordability and availability of care.

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interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 31 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about proposed changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received more than 1,200 comments relating to Chapters 745 (Licensing), 744, 746 (Minimum Standards for Child-Care Centers), and 747 (Minimum Standards for Child-Care Homes) from stakeholders for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations that were then presented to a temporary workgroup. The temporary workgroup was comprised of approximately 15 participants, including providers from child-care centers, a provider from a school-age and before- and after-school program, a parent, representatives from Licensing, and a representative from the Texas Workforce Commission. The workgroup had an introductory meeting on March 22, 2016, and subsequently met twice on April 5, 2016 and May 16, 2016 to review and provide comments regarding the recommended changes to Chapter 744 (and Chapters 746 and 747).

In response to the comments received, DFPS is recommending amending/repealing/ adding over 125 minimum standards in Chapter 744. In addition to responding to comments, three other primary goals of this comprehensive review were to (1) make the language of the rules consistent throughout the chapter, (2) delete minimum standards or portions of minimum standards that are duplicative or redundant, and (3) combine minimum standards when appropriate. The last two goals resulted in the deletion of approximately 20 minimum standards. Below is a broad overview of some of the different areas and types of changes that DFPS is recommending: (1) repealing, adding, moving, and modifying definitions. One example is the repeal of §744.2509 and §744.2511 which defined "sanitizing" and "disinfecting solution" and combining, modifying, and updating these definitions into one definition for "sanitize" and adding it the new §744.123(46); (2) reorganizing Subchapter A by creating three new Divisions: Purpose, Scope, and Definitions. The focus of the reorganization is to provide better clarity and continuity; (3) updating or deleting outdated rules or language in the rules, including: (a) deleting outdated grandfather clauses (§§744.1019 and 744.3255) and outdated wording ("coin operated pay phone" in §744.3051 and "message pagers" in §744.3821); (b) updating the immunization minimum standards to be consistent with the current Department of State Health Services rules (§§744.613, 744.615, 744.617, 744.619, 744.621 and 744.623); and (c) deleting the use of rectal thermometers and allowing the use of tympanic (ear) thermometers (§744.2571); (4) clarifying confusing concepts by: (a) adding a new rule §744.1401 by deleting, combining, and modifying previous §744.1401 and §744.1403 to explain when substitutes, volunteers, and contractors must comply with the minimum standards that apply to employees and caregivers; and (b) adding a rule that a sick child may return to care when there is a doctor's statement that the child no longer has the excludable condition, or the child is free of symptoms for 24 hours (§744.2576); (5) strengthening the minimum standards when it is necessary for the safety of children, for example: (a) requiring a written oversight plan until a site director meets the required education qualifications (§744.107(c)(2)); (b) requiring televisions to be anchored, so they cannot tip over (§744.2601); and (c) banning the use of e-cigarettes and any type of vapors (§744.2603); and (6)

allowing more discretion by providers while still ensuring the safety of children, for example: (a) allowing first aid (but not CPR) to be obtained through self-instructional training (§744.1315); and (b) allowing the use of hand sanitizers (§744.2520).

SECTION-BY-SECTION SUMMARY

Subchapter A, Purpose and Definitions is being amended and Subchapter A is being renamed "Purpose, Scope, and Definitions" for clarity and better continuity.

Proposed new division is being added to Subchapter A: Division 1, Purpose. The only rule in this division is current §744.101. The new division is being added for clarity and better continuity.

Proposed amendment to §744.101 is correcting a cite to the HRC.

Proposed repeal of §744.103 deletes a rule regarding the definitions of pronouns is being incorporated into new §744.121.

Proposed repeal of §744.105 deletes a rule regarding definitions is being incorporated into new §744.123. Many substantive changes are being made to this rule, including the deletion, addition, and modification of many definitions.

Proposed repeal of §744.107 deletes a rule regarding types of operations and scope is being incorporated into new §744.111. However, the language in the rule regarding grandfather clauses for former licensed child-care centers exclusively providing before-school and after-school program services or school-age program services has been deleted because these operations were previously required to amend their permit to reflect they are subject to these minimum standards.

Proposed repeal of §744.109 deletes a rule regarding permit holders and scope is being incorporated into new §744.113.

Proposed new division is being added to Subchapter A: Division 2, Scope. The new division is being added for clarity and better continuity.

Proposed new §744.111 includes the content from §744.107, which is being deleted, with the following substantive changes: (1) the language in §744.107 regarding grandfather clauses is being deleted because it is no longer relevant; and (2) language is being added to clarify that the minimum standards in this chapter also apply to any unlicensed operation that requires a license per HRC, Chapter 42, because the operation provides before or after-school program services or school-age program services.

Proposed new §744.113 includes the content from §744.109, which is being deleted, with the

addition of subsection (b) to clarify that the operation's director, owner, or person overseeing the operation or other controlling person who has the ability to influence or direct the operation's management, expenditures, or policies must ensure compliance with the minimum standards in this chapter.

Proposed new division is being added to Subchapter A: Division 3, Definitions. The new division is being added for clarity and better continuity.

Proposed new §744.121 includes the content from §744.103, which is being deleted.

Proposed new §744.123 includes the content from §744.105, which is being deleted, with the following substantive changes: (1) several terms from §744.105 are not being incorporated into new §744.123 because the content of the terms are being incorporated into the only rule where the term is used in this chapter, including "caregiver-initiated activities", "child-initiated activities", and "single-use area"; (2) several terms are being deleted because these words are not used in this chapter, are already defined in some other section, or are not needed, including "child passenger safety-seat system" (already defined at §744.3807), "creative activities", "critical illness", "group activities", "frequent", "operation location", and "pre-service training"; (3) several terms are being deleted from other rules and are being incorporated into this definition rule, including "CEUs", "clock hours", "instructor-led training", "sanitize" (with substantive changes), and "self-instructional training"; (4) several terms are being added, including "employee", "governing body", "nighttime care", "owner", "permit holder", "permit is no longer valid", and "premises"; (5) "state and local sanitation official" is being changed to "local sanitation official" because there are no longer any state sanitation officials for day care purposes; and (6) the definitions to several terms are being modified, including "administrative and clerical duties", "age-appropriate", "caregiver" (this definition has been substantively changed), "Certified Child-Care Professional Credential", "Child Development Associate Credential", "inflatable", "instructor-led training", "janitorial duties", "regular", "multi-site operations", "self-instructional training", "special care needs", and "water activities".

Proposed amendment to §744.201 clarifies that the permit holder is responsible for ensuring that the number of children in care never exceeds the licensed capacity of the operation, even when the children are away from the operation (e.g. field trip). This is currently required in §744.1507(6).

Proposed amendment to §744.301 adds: (1) the content of the "operation location" definition, which is being deleted; and (2) Licensing notification requirements before an operation offers nighttime care services, or changes ownership (which is being incorporated from current §744.303(1)).

Proposed amendment to §744.303 deletes the requirement to notify Licensing before an operation sells or transfers ownership of the operation, which is being incorporated into §744.301(10); clarifies the language of the rule; and clarifies that the designee for a sole proprietorship is the sole proprietor.

Proposed amendment to §744.305 deletes broad examples of occurrences that that may render and operation unsafe or unsanitary, because more specific examples are already included in a Helpful Information box located on the DFPS Public Website version of the minimum standards.

Proposed amendment to §744.401 clarifies that activity plans for each group of children (if required by §744.2005) must be posted at the operation at all times. This requirement is being incorporated from deleted §744.2005(d), so all the posting requirements will be in one rule.

Proposed amendment to §744.405 deletes the requirement to post the address of the nearest Licensing office, because the workers are now mobile workers and not at a particular office; and clarifies the wording of the rule for accuracy.

Proposed amendment to §744.501: (1) clarifies the language of the rule; (2) adds requirements for new operational policies for the suspension and expulsion of children, and procedures for using insect repellent and sunscreen; and (3) clarifies that the discipline and guidance policy must be consistent with Subchapter G, or Subchapter G may be used as the discipline and guidance policy (unless the operation uses discipline and training measures specific to a skills-based program). This change is being incorporated from §744.2111, which is being deleted.

Proposed amendment to §744.503 clarifies that a parent's signature for the enrollment agreement and the operational policies may be a signature on one document or several documents (this came from §744.2113(b), which is being deleted).

Proposed amendment to §744.505 clarifies that employees must be notified of any changes to the operational policies (this came from §744.2115, which is being deleted) and child-care enrollment agreement; and clarifies the language of the rule.

Proposed repeal of §744.507 is deleted because at §744.901(6) it is already clear that operational policies must be shared with employees.

Proposed amendment to §744.603 clarifies several paragraphs by stating: (1) admission information is that information required in §744.605; (2) TB screening is only needed if required by DSHS or a local health authority; and (3) documentation from a health-care professional that allows a deviation from minimum standards must be maintained in the child's record.

Proposed amendment to §744.605 clarifies that permission for transportation includes authorization for pick-up and drop-off locations. This change is being incorporated from a vague version of this requirement, which is being deleted from §744.3801.

Proposed amendment to §744.613 clarifies: (1) that current immunization records must be maintained, including records of any exemptions or exceptions; and (2) the situations where immunizations are not required by the date of admission, including exemptions, exceptions, and

provisional enrollment for up to 30 days for homeless children or children in foster care.

Proposed repeal of §744.615 is being deleted and replaced by new proposed §744.615. This rule incorporates the language from the repealed rule and further explains the immunization exemptions and exceptions that are allowed by the DSHS rules.

Proposed repeal of §744.617 615 is being deleted and the content of this rule will be added to and expounded upon in a Helpful Information box located on the DFPS public website version of the minimum standards.

Proposed repeal of §744.619 is being deleted and the content of this rule is being incorporated into §744.613(c).

Proposed repeal of §744.621 is being deleted and the content of the rule is being incorporated into §744.613(c)(2).

Proposed amendment to §744.623 clarifies the documentation requirements that are acceptable for an immunization record, including: (1) an immunization record generated from a state or local health authority, a record received from school officials, or a health passport for a child in the conservatorship of the department; and (2) an immunization record from a doctor's office, which also requires a signature of a health-care professional.

Proposed amendment to §744.627 clarifies the language of the rule for ease of understanding; and the requirement to keep tracking information for three months is being deleted because it is already required by §744.801(17) and §744.803(a).

Proposed repeal of §744.703 is being deleted and the content of this rule is being added to a Helpful Information box after §744.701 that is located on the DFPS public website version of the minimum standards.

Proposed amendment to §744.705 clarifies how the Incident/Illness Report form must be completed.

Proposed amendment to §744.801 clarifies what records must be kept at the operation, including: (1) requiring attendance records or time sheets listing all days and hours worked for each employee. This content came from §744.905, which is being deleted; (2) deleting several paragraphs because the items are already required to be posted in §744.401, such as group activity plans, daily menus, and the most recent licensing inspection report; (3) deleting the requirement of proof of background checks because it is already required in §744.901; and (4) adding a requirement to keep a child tracking system at the operation. The system must be consistent with the requirements in §744.627.

Proposed amendment to §744.803 is being amended because several items are being deleted from

§744.801 because they are already required to be posted, so this rule is being updated to clarify that a posted record must also be kept for at least three months from the date the record was created.

Proposed repeal of §744.903 is being deleted because it is redundant. The Director's Certificate is already required in §744.1037, and as an employee a Director is already required to receive operational and personnel policies in §744.901(6).

Proposed repeal of §744.905 is being deleted because the content of this rule is being incorporated into §744.801(4).

Proposed amendment to §744.909 clarifies that Licensing may photograph, copy, or scan an operation's records.

Proposed amendment to §744.1001 deletes the language in this rule that reminds an operation to notify Licensing when there is a change in directors because it is redundant. However, this information is being added to a Helpful Information box following the rule, which is located on the DFPS public website version of the minimum standards.

Proposed amendment to §744.1003 is for the purpose of clarifying the language of this rule because "multi-site operations" is defined, not "multiple operations"; and deleting the phrase "under the same governing body" because this is already clarified in the definition.

Proposed amendment to §744.1015 deletes the notification that some qualifications for an operation or program director require periodic renewal to remain qualified, because this information is already clarified in §744.1051 and §744.1053. However, this information and the citations of the relevant rules regarding the renewal of an operation or program director's certificate are being added to the Helpful Information box following this rule, which is located on the DFPS public website version of the minimum standards.

Proposed amendment to §744.1017 clarifies that the operation must provide Licensing a written plan describing the oversight the program director will be providing the site director until the required education qualifications are completed, including the sharing of director responsibilities, if applicable.

Proposed repeal of §744.1019 is being deleted because it contains grandfather clauses that are no longer necessary.

Proposed amendment to §744.1023 corrects a vague pronoun use.

Proposed new §744.1029 reorganizes the placement of §744.1041, which is being deleted, for better readability and flow of the rules.

Proposed repeal of §744.1029 is being deleted and "Clock hours" is being incorporated into the definitions rule in §744.123 with some modifications for clarity and accuracy.

Proposed repeal of §744.1031 is being deleted because it is not accurate. The criteria that are required for trainers is located in §744.1319.

Proposed repeal of §744.1033 is being deleted and "CEUs" is being incorporated into the definitions rule at §744.123.

Proposed amendment to §744.1035 incorporates the content from §744.1039, which is being deleted; and the wording of the question and the answer is also being modified for ease in understanding the rule.

Proposed amendment to §744.1037 clarifies that a director must meet these additional qualifications in addition to the employee qualifications (and minimum qualifications of a caregiver, if applicable). Two paragraphs are also being deleted, because they are already required for all employees.

Proposed repeal of §744.1039 is being deleted and the content of this rule is being incorporated into §744.1035(c).

Proposed repeal of §744.1041 is repealed and the content of this rule is being incorporated into new proposed §744.1029.

Proposed amendment to §744.1051 clarifies the rule by making it specific to the operation directors, program directors, and site directors; and clarifying the language of the rule for better readability and ease in understanding.

Proposed amendment to §744.1053 clarifies the rule by making it specific to operation directors and program directors.

Proposed amendment to §744.1055 clarifies the rule by making it specific to operation directors and program directors; and clarifying the language of the rule for better readability and ease of understanding.

Proposed repeal of §744.1101 is being deleted and the content of this rule is being incorporated into the new definition for "employee" and the revamped definition for "caregiver" at §744.123.

Proposed amendment to §744.1103 deletes some of the wording in the introduction to this rule because it is inaccurate.

Proposed amendment to §744.1105: (1) updates the terminology related to caregivers; (2) incorporates the content from §744.1111 into §744.1105(2)(B)(i) to clarify a "high school equivalent", with non-substantive changes for better readability and ease of understanding; and (3) adds a "high school equivalent" for home schooling that adequately addresses basic competencies at §744.1105(2)(B)(ii).

Proposed amendment to §744.1107 clarifies that: (1) a person under the age of 18 who is hired must not be left alone with an individual child; (2) child-care-related career programs may also be approved by charter schools, the Texas Private School Accreditation Commission, or home schools that adequately addresses basic competencies; and (3) for a person under the age of 18 who attends a home-school that adequately addresses basic competencies and has graduated or not graduated, this person must complete the eight hours of pre-service training before being placed in a room with children.

Proposed repeal of §744.1111 is being deleted and the content of this rule is being incorporated into §744.1105(2)(B)(i).

Proposed amendment to §744.1203 clarifies the language of this rule by: (1) deleting "counted in the child/caregiver ratio" because this is the new definition of a caregiver and the language is no longer necessary; (2) changing "administrative and clerical functions" to "administrative and clerical duties", because "duties" is the term that is defined in §744.123; and (3) deleting and incorporating the examples after "janitorial duties" into the definition for "janitorial duties" in §744.123.

Proposed repeal of §744.1301 is being deleted and replaced with a new rule and table to: (1) clarify which training requirements are for employees and caregivers; and (2) delete the Director training requirements which are already noted at §744.1309 and §744.1311.

Proposed amendment to §744.1315 clarifies that first aid training can now be obtained through self-instructional training.

Proposed amendment to §744.1317 makes the use of "employee" consistent throughout the rule; and "owner" has been clarified in the definition of an "employee" in §744.123. An owner is an employee if the owner is ever on site at the operation or transports children.

Proposed amendment to §744.1319: (1) updates the title of the training registry; (2) clarifies that a Child Development Associate credential must be current; (3) deletes subsection (c) because it is already included at §744.1315(d); and (4) clarifies that subsection (d) applies to both instructor-led and self-instructional training, which came from §744.1327(c), which is being deleted.

Proposed amendment to §744.1321 clarifies that while Licensing does not approve training resources, training must comply with the criteria specified in §744.1319, required training topics, and documentation requirements.

Proposed amendment to §744.1325 simplifies and streamlines the requirement for counting training received by employees from another operation by deleting the requirement to adjust the annual training year for those employees.

Proposed repeal of §744.1327 is being deleted and the definitions for self-instructional and instructor-led training are being incorporated into the definitions rule at §744.123; and the content for subsection (c) is being incorporated into §744.1319(d).

Proposed repeal of §744.1401 is being deleted and being replaced by new proposed §744.1401. The new rule: (1) incorporates with substantial clarifications the content of §744.1401 and §744.1403, which are being deleted; and (2) clarifies that volunteers who only supplement ratios for field trips and water activities do not have to comply with minimum standards for employees or caregivers, but they do have to comply with the minimum standards in Subchapter E regarding ratios.

Proposed repeal of §744.1403 is being deleted and the content is being incorporated into new proposed §744.1401.

Proposed amendment to §744.2001: (1) clarifies that written activity plans are required for programs where children are anticipated to be in care for more than five consecutive hours in a day. The plans are not child specific; (2) broadens the cite for compliance with regular meal and snack time to include all of Subchapter J (Nutrition and Food Service), not just §744.2403; and (3) incorporate the definitions for "child-initiated activities" and "caregiver-initiated activities" from the current definitions rule because this is the only rule that discusses these two terms.

Proposed amendment to §744.2005: (1) makes this rule consistent with §744.2001 to clarify that written activity plans are required for programs where children are anticipated to be in care for more than five consecutive hours in a day. The plans are not child specific; (2) deletes subsection (d) and moves the requirement to post written activity plans to §744.401(5); and (3) deletes the subsection (e) requirement to keep the written activity plans for three months, because it is already required in §744.803(a).

Proposed repeal of §744.2101 is being deleted and the content of subsection (a) is being deleted and incorporated into §74.2103. However, subsection (b) regarding explaining the reason for the disciplinary measure is being deleted because no such requirement exists in Chapter 746 of this title and it is not necessary.

Proposed amendment to §744.2103 incorporates the content from §744.2101(a), which is being

deleted.

Proposed amendment to §744.2105 clarifies that prohibited discipline includes placing a child in a dark room, whether the door is closed or not.

Proposed repeal of §744.2111 is being deleted and the content of: (1) subsection (a) is being incorporated into §744.501(7); and (2) subsection (b) is being deleted because it is already required by §744.503 and §744.901(6).

Proposed repeal of §744.2113 is being deleted because it and §744.2111 are very repetitive, and all of the requirements are already included in §744.503 and §744.901(6).

Proposed repeal of §744.2115 is being deleted because the requirement that parents be given a copy of any updated discipline and guidance policy is already required in §744.505. However, the wording of §744.505 is being modified for clarification.

Proposed amendment to §744.2207 shortens from one hour to 30 minutes the time for when a child that cannot sleep may participate in an alternative, quiet activity until the nap/rest time is over for other children.

Proposed amendment to §744.2211 clarifies that lowering the lighting in a room requires enough lighting that a person's eyes do not need to adjust for the person to be able to see upon entering the room.

Proposed repeal of §744.2305 is being deleted because it only references the subchapter regarding ratios and group sizes. Since it provides no additional information, it is not necessary.

Proposed amendment to §744.2409 deletes "meals" from subsection (d) because parents must not be providing meals for other children.

The amendment to §744.2411 corrects the inappropriate use of the pronoun "we" by substituting "the operation".

Proposed amendment to §744.2413 deletes the information relating to posting menus and keeping the menus because the posting is already required by §744.401(6) and §744.803. In addition, because of the deletion the question and the rule had to be modified to clarify the remaining issues regarding substituting and rotating menus.

Proposed amendment to §744.2501 changes the term "state or local sanitation official" to "local sanitation official" in order to be consistent with other language in the chapter.

Proposed amendment to §744.2505 clarifies the language of the rule for better readability and ease of understanding.

Proposed repeal of §744.2509 is being deleted and the definition for "sanitizing" is being incorporated into the new definition for "sanitize" in §744.123.

Proposed repeal of §744.2511 is being deleted and the definition for "disinfecting solution" is being incorporated into the new definition for "sanitize" in §744.123.

Proposed amendment to §744.2515 clarifies that employees must wash their hands after removing gloves; and clarifies the language of the rule for better readability and ease of understanding.

Proposed amendment to §744.2519 deletes the statement that pre-moistened towelettes, wipes, and waterless hand cleaners are not a substitute for running water. However, a statement will be added to the Helpful Information box after new proposed §744.2520 that states the use of hand sanitizers is not a substitute for hand washing in the group care setting. The Helpful Information box will be located on the DFPS public website version of minimum standards.

Proposed new §744.2520 clarifies that hand sanitizer may be used as a substitute for washing hands under certain conditions: (1) not used for visibly dirty hands; (2) stored out of the reach of children; (3) follow the labelling instructions; and (4) used only with adult supervision.

Proposed amendment to §744.2551 clarifies that a "sealed bag" means "in a tied, sealed or otherwise closed plastic bag", which also makes the language consistent with changes made in the Child Care Development Block Grant (CCDBG) rule packet.

Proposed amendment to §744.2571 updates the language of the rule by deleting the use of rectal temperatures and adding the use of tympanic (ear) temperatures; and also clarifies some of the language of the rule for better readability and ease of understanding.

Proposed amendment to §744.2573 deletes the statement that "you can access (the communicable disease) information from DSHS or Licensing" and more detailed information about where to access the information is being added to the Helpful Information box located on the DFPS public website version of minimum standards.

Proposed new §744.2576 clarifies that an ill child may return to the operation when: (1) the child is free of illness symptoms for 24 hours; or (2) there is a health-care professional's statement that the child no longer has the excludable disease or condition.

Proposed amendment to §744.2577: (1) deletes the term "critical" illness/injury and simplifies the rule to talk about an injury or illness that requires the immediate attention of a health-care professional. This is the only rule that discusses a "critical" injury/illness; (2) substitutes "health-care professional" for "physician"; and (3) clarifies that even if a child must be taken to an emergency room, you must first ensure the supervision of the other children in the group.

Proposed amendment to §744.2601 requires televisions to be anchored, so they cannot tip over.

Proposed amendment to §744.2603 bans the use of e-cigarettes and any type of vapors.

Proposed amendment to §744.2607 adds commissioned security officers as persons who may carry a firearm on the premises of an operation; changes the colloquial term of "law enforcement official" to "peace officer", which is defined at §2.12, Code of Criminal Procedure; and changes "residence" to "home" for consistency throughout the chapter.

Proposed amendment to §744.2609 clarifies the language of the rule for better readability and ease of understanding; and applies the limitation on toys that explode or shoot to both the operation and on field trips.

Proposed amendment to §744.2651 clarifies that a topical ointment, such as insect repellent, is not a medication.

Proposed amendment to §744.2701 clarifies that the requirements for animals at operations also apply on a field trip.

Proposed amendment to §744.2905 simplifies the exemptions to the indoor activity space requirements.

Proposed amendment to §744.2907 clarifies that measurements for indoor activity space will be rounded "up" to the nearest inch; and incorporates the definition for "single-use areas" because it is not used in any other rule in this chapter.

Proposed amendment to §744.3003 deletes the last sentence in this rule because it only references the subchapter regarding Health Practices for further information. Since it provides no additional information, it is not necessary. However, the information is being added to a new Helpful Information box located on the DFPS public website version of minimum standards.

Proposed amendment to §744.3007 clarifies that toilets must be equipped with toilet paper.

Proposed amendment to §744.3051 deletes an outdated reference to coin operated pay phones.

Proposed amendment to §744.3101 clarifies that active play equipment must be used according to the manufacturer's instructions; and deletes the word "space" because it is incorrectly used in this rule.

Proposed amendment to §744.3107 modifies the wording of the rule to be consistent with the Chapter 746 sister rule (§746.4605).

Proposed repeal of §744.3109 is being deleted and replaced with a new rule that: (1) adds two new options for the maximum height allowed for the highest designated play surface to be consistent with the manufacturer's guidelines or the ASTM International standards; and (2) adds a chart for the third option (which is not new) for better readability and ease of understanding.

Proposed amendment to §744.3111 deletes outdated grandfather clauses; and modifies the language of the rule for consistency, better readability, and ease of understanding.

Proposed amendment to §744.3209 corrects a typographical error in the rule.

Proposed amendment to §744.3251 corrects a statement in the rule, because there is no minimum standard that addresses the "type" of loose materials or unitary surfacing that must be used in relation to the height of the highest designated play surface.

Proposed amendment to §744.3255 deletes an outdated grandfather clause.

Proposed amendment to §744.3351 clarifies that inflatables must be used according to manufacturer's instructions; and modifies the language of the rule for better readability and ease of understanding.

Proposed repeal of §744.3409 is being deleted because this clarification rule that a fence does not relieve caregivers of supervision requirements is already clear at §744.1203(4) and §744.1205.

Proposed amendment to §744.3413 clarifies that: (1) children must not be left alone with sprinkler equipment; and (2) the splash pad/sprinkler play area must be maintained according to manufacturer's instructions.

Proposed amendment to §744.3505 takes unnecessary wording out of the rule for better readability and ease of understanding.

Proposed amendment to §744.3561 clarifies the language of the rule for better readability and ease of understanding.

Proposed amendment to §744.3605 clarifies that the manufacturer's instructions for mounting a fire extinguisher must be followed.

Proposed amendments to rules §744.3607, §744.3619, and §744.3757 modify the language of the rules for better readability and ease of understanding; and make the terminology regarding servicing, inspecting, and testing fire extinguishers and carbon monoxide detectors consistent throughout the chapter.

Proposed amendment to §744.3801 modifies the language of the rule for better readability and ease of understanding; and the issue of parental authorization for pick-up and drop-off locations is being deleted and incorporated with modifications into §744.605(8).

Proposed amendment to §744.3805 modifies the language of the rule for better readability and ease of understanding.

Proposed amendment to §744.3807 clarifies the term "child passenger safety seat system"; and restructures the rule for better readability and ease of understanding.

Proposed amendment to §744.3817 modifies the language of the rule for better readability and ease of understanding; and broadens the first-aid requirements to comply with all of Division 4 of Subchapter L instead of only §744.2753.

Proposed amendment to §744.3821 deleted an outdated reference to message pagers.

FISCAL NOTE

Lisa Subia, Chief Financial Officer of DFPS, has determined that for each of the first five years that the rules will be in effect there will not be costs or revenues to state or local government as a result of enforcing or administering the sections.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Subia has determined that the only anticipated adverse impact on small or micro businesses is as a result of the proposed rule change to §744.501. The proposed change will impact licensed operations that meet the definition of a small and micro-business that do not already have relevant operational policies in place. According to the DFPS FY 2015 Annual Report and Data Book as of August 31, 2015, there were 1,551 licensed School-Age and Before or After-School Programs (operations) in Texas.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in

annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business. Based on a 2010 survey conducted by CCL, it is estimated that 55% (or 853) are for profit businesses. Of those 853 operations, it is estimated that 98% (or 836) have fewer than 100 employees. Of the 836 operations, it is estimated that 68% (or 568) have fewer than 20 employees. So it is estimated that 836 operations are small business, and 568 operations are micro-businesses.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for the rule that is projected to have a fiscal impact.

For School-Age and Before or After-School Programs, the staff time required to comply with the standards will impact Directors. For use in this impact analysis, DFPS will use the following mean wages that were obtained from the Texas Workforce Commission's website for Occupational Wages based on 2015 estimates: For all Directors, DFPS is using a \$25.57 per hour mean wage from the Occupational Title of Education Administrator, Preschool and Childcare Center.

Fiscal Impact for Proposed §744.501: This section adds two new operational policies that must be developed: suspension and expulsion of children; and procedures for providing and applying insect repellent and sunscreen. The fiscal impact to these operations results from staff time to develop policy regarding these two topics. It is anticipated, after discussing this issue with the temporary workgroup, that a Director, or curriculum developer that is similarly paid, will spend an average of one to three hours developing these two operational policies. Therefore, the approximate one-time cost for the development of these two operational policies is between \$25.57 (1 hour X \$25.57) and \$76.71 (3 hours X \$25.57).

The other recommended rule changes should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

Regulatory Flexible Analysis: As previously noted, of the 1,554 School-Age and Before or After-School Programs, it is estimated that 837 of them are small business, and 569 of them are micro-businesses. The projected fiscal impact on small and micro-businesses for §744.501 is addressed in the foregoing section. DFPS did consider not requiring each of the two new operational policies, but ultimately decided that the one-time cost is appropriately small and merited the changes. These two new operational policies will ensure the health and safety of children and prevent the inappropriate removal of children from operations. There is no anticipated impact on technology as a result of the proposed rule change.

PUBLIC BENEFIT AND COST

Ms. Subia also has determined that for each of the first five years that the proposed sections will be in effect, the public benefit anticipated as a result of the rule change will be that (1) there will be clarification of the Minimum Standards for School-Age and Before or After-School Programs resulting in more compliance; (2) DFPS will be in compliance with HRC §42.042(b); and (3) there will be reduced risk to children. Other than the cost to an owner of an operation as noted below, there is no anticipated economic cost to individual persons who are required to comply with the proposed sections.

TAKING IMPACT ASSESSMENT

Ms. Subia has determined that the proposed amendments, repeals, and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

PUBLIC COMMENT

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-553, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

STATUTORY AUTHORITY

The amendments, repeals and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Human Resources Code §42.042.

This agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

TITLE 40 SOCIAL SERVICES & ASSISTANCE
PART 19 DEPT. OF FAMILY AND PROTECTIVE SERVICES
CHAPTER 744 MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR
 AFTER-SCHOOL PROGRAMS
SUBCHAPTER A PURPOSE, SCOPE, AND DEFINITIONS
DIVISION 1 PURPOSE

§744.101. What is the purpose of this chapter?

The purpose of this chapter is to set forth the minimum standards that apply to operations exclusively providing before and after-school care services as defined by the Human Resources Code (HRC) §42.002(20) and school-age program services as defined by the HRC §42.002(21) [~~HRC §42.002(22)~~].

MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS (CH. 744)

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TITLE 40 SOCIAL SERVICES & ASSISTANCE
PART 19 DEPT. OF FAMILY AND PROTECTIVE SERVICES
CHAPTER 744 MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS
SUBCHAPTER A PURPOSE AND DEFINITIONS

~~§744.103. What do certain pronouns mean in this chapter?~~

~~The following words have the following meanings in this chapter:~~

- ~~(1) I, my, you, and your—An applicant or permit holder, unless otherwise stated.~~
- ~~(2) We, us, our, and Licensing—The Licensing Division of the Texas Department of Family and Protective Services (DFPS).]~~

~~§744.105. What do certain words and terms mean in this chapter?~~

~~The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. In addition, the following words and terms have the following meanings unless the context clearly indicates otherwise:~~

- ~~(1) Activity space—An area or room used for children's activities, including areas separate from a group's classroom.~~
- ~~(2) Administrative and clerical duties—Duties that involve the management of an operation, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.~~
- ~~(3) Admission—The process of enrolling a child in an operation. The date of admission is the first day the child is physically present at the operation.~~
- ~~(4) Adult—A person 18 years old and older.~~
- ~~(5) Age appropriate—Activities, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.~~
- ~~(6) Attendance—When referring to a child's attendance, the physical presence of a child at the operation on any given day or at any given time, as distinct from the child's enrollment in the operation.~~
- ~~(7) Before or After school program—An operation that provides care before and after or before or after the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend pre-kindergarten through grade six.~~
- ~~(8) Caregiver—A person whose duties include the supervision, guidance, and protection of a child. As used in this chapter, the term means a person who meets the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel).~~
- ~~(9) Caregiver-initiated activities—Activities that are directed by or chosen by the caregiver.~~
- ~~(10) Certified Child Care Professional Credential—A credential given to a person working directly with children based on his assessed competency in several areas of child care and child development.~~
- ~~(11) Certified lifeguard—A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization which awards a certificate upon successful~~

MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS (CH. 744)

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completion of the training. The certificate is not required to use the term "lifeguard," but the permit holder must be able to document that the certificate represents the type of training described.

~~(12) Child Development Associate Credential—A credential given to staff working directly with children based on his assessed competency in several areas of child care and child development.~~

~~(13) Child-initiated activities—Activities that a child chooses on the child's own initiative and that foster the child's independence. Child-initiated activities require equipment, materials, and supplies to be within a child's reach.~~

~~(14) Child passenger safety seat system—A child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.~~

~~(15) Corporal punishment—The infliction of physical pain on a child as a means of controlling behavior. This includes, but is not limited to, spanking, hitting, slapping, thumping, or rapping a child.~~

~~(16) Creative activities—Activities that encourage a child to use his imagination. Creative activities include, but are not limited to, dramatic play, stories and books, science and nature activities, and music and art activities.~~

~~(17) Critical illness—An illness requiring the immediate attention of a health-care professional.~~

~~(18) Days—Calendar days, unless otherwise stated.~~

~~(19) Director—An adult you designate to have daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards and Licensing laws. As this term is used in this chapter, a director may be an operation director, program director, or site director, unless the context clearly indicates otherwise.~~

~~(20) Enrollment—The list of names or number of children who have been admitted to attend an operation for any given period of time. The number of children enrolled in an operation may vary from the number of children in attendance on any given day.~~

~~(21) Entrapping equipment—A component or group of components on equipment that forms angles or openings that could trap a child's head by being too small to allow the child's body to pass through or large enough for the child's body to pass through, but too small to allow the child's head to pass through.~~

~~(22) Field trips—Activities conducted away from the operation.~~

~~(23) Food service—The preparation or serving of meals or snacks.~~

~~(24) Frequently—More than two times in a 30-day period.~~

~~(25) Garbage—Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.~~

~~(26) Group activities—Activities that allow children to interact with others in large or small groups. Group activities include, but are not limited to, storytelling, show and tell, organized games, and singing.~~

~~(27) Health check—A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.~~

~~(28) Health-care professional—A licensed physician, licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nurse Examiners, a~~

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licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of his license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

~~(29) Individual activities—Opportunities for the child to work independently or to be away from the group, but supervised.~~

~~(30) Inflatable—An amusement ride or device, consisting of air-filled structures designed for use, as specified by the manufacturer, that may include but not be limited to bounce, climb, slide, or interactive play. They are made of flexible fabric, are kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.~~

~~(31) Janitorial duties—Those services that involve cleaning and maintenance above that which is required for the continuation of the child-care operation. Cleaning and maintenance include such duties as cleansing carpets, washing cots, sweeping, vacuuming, or mopping a classroom.~~

~~(32) Multi-site operations—Child-care facilities with separate permits that share the same governing body, and may have centralized business functions, record keeping, and leadership.~~

~~(33) Natural environment—Settings that are natural or normal for all children of an age group without regard to ability or disability. For example, the primary natural group setting for a school-age child with a disability would be a play group or program, or whatever setting exists for school-age children without disabilities.~~

~~(34) Operation director—A director at your operation who is not supervised by a program director. An operation that has an operation director cannot have a program director or a site director.~~

~~(35) Operation location—The street address of the operation and the lot or lots on which the building or buildings are located.~~

~~(36) Pre-service training—Training given to a person who has no previous experience in regulated child-care operations, and relevant training in specified skills development offered by the operation.~~

~~(37) Program—The services and activities provided by an operation.~~

~~(38) Program director—A director who oversees your program at multiple operations and supervises a site director at each operation.~~

~~(39) Regularly—On a recurring, scheduled basis.~~

~~(40) Safety belt—A lap belt and any shoulder straps included as original equipment on or added to a vehicle.~~

~~(41) School-age child—A child who is five years of age and older, and who will attend school at or away from the operation in August or September of that year.~~

~~(42) 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 who attend 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.~~

~~(43) Single use area—Area not routinely used for children's activities, such as a bathroom, hallway, storage room, cooking area of a kitchen, swimming pool, and storage building.~~

~~(44) Site director—A director who has on-site responsibility at a specific operation but who is supervised by a program director.~~

~~(45) Special care needs—A child with special care needs is a child who has a chronic~~

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~~physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including but not limited to, movement of large and/or small muscles, learning, talking, communicating, self-help, social, emotional, seeing, hearing, and breathing.~~

~~(46) State or local fire marshal—A fire official designated by the city, county, or state government.~~

~~(47) State or local sanitation official—A sanitation official designated by the city, county, or state government.~~

~~(48) Universal precautions—An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.~~

~~(49) Water activities—Related to the use of splashing pools, wading pools, swimming pools, or other similar bodies of water.]~~

~~[§744.107. What types of operations do these minimum standards apply to?~~

~~The minimum standards in this chapter apply to the following types of operations:~~

~~(1) All child-care facilities licensed on or after September 1, 2010, to provide before and after-school care program services exclusively;~~

~~(2) All child-care facilities licensed on or after September 1, 2010, to provide school-age program services exclusively; and~~

~~(3) All child-care facilities licensed before September 1, 2010, as a licensed child-care center exclusively providing before-school and after-school program services or school-age program services on or after September 1, 2010, will be required to amend their permit to reflect that they are subject to the minimum standards in this chapter. This must be completed no later than September 1, 2011.]~~

~~[§744.109. Who is responsible for complying with these minimum standards?~~

~~You, the permit holder, must ensure compliance with all minimum standards in this chapter at all times, with the exception of those minimum standards identified for specific types of child-care programs or activities that your operation does not offer. For example, if we license you to provide care for school-age children exclusively, you would not be responsible for complying with rules regarding pre-kindergarten children; however, you must comply with all other minimum standards.]~~

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DIVISION 2 SCOPE

§744.111. What types of operations do these minimum standards apply to?

The minimum standards in this chapter apply to:

- (1) Day-care operations licensed to provide before and/or after-school care program services;
- (2) Day-care operations licensed to provide school-age program services;
- (3) Any unlicensed day-care operation that requires a license per Human Resources Code (HRC), Chapter 42, because the operation provides before and/or after-school program services; and
- (4) Any unlicensed day-care operation that requires a license per HRC, Chapter 42, because the operation provides school-age program services.

§744.113. Who is responsible for complying with these minimum standards?

(a) For a licensed before or after-school program or school-age program, the permit holder must ensure compliance with all minimum standards in this chapter at all times, with the exception of those minimum standards identified for specific types of child-care programs or activities that the operation does not offer. For example, if we license the operation to offer a before and after-school program, the operation does not have to comply with minimum standards that apply to nighttime-care programs; however, the operation must comply with all other minimum standards.

(b) For an unlicensed before or after-school program or school-age program that is subject to Licensing's regulation, the operation's director, owner, or person overseeing the operation or other controlling person who has the ability to influence or direct the operation's management, expenditures, or policies must ensure compliance with all minimum standards in this chapter at all times, with the exception of those minimum standards identified for specific types of child-care programs or activities that the unlicensed operation does not offer.

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DIVISION 3	<u>DEFINITIONS</u>

§744.121. What do certain pronouns mean when used in this chapter?

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

- (1) I, my, you, and your--An applicant or permit holder, unless otherwise stated.
- (2) We, us, our, and Licensing--The Licensing Division of the Texas Department of Family and Protective Services (DFPS).

§744.123. What do certain words and terms mean when used in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

- (1) Activity space--An area or room used for children's activities, including areas separate from a group's classroom.
- (2) Administrative and clerical duties--Duties that involve the administration of an operation, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.
- (3) Admission--The process of enrolling a child in an operation. The date of admission is the first day the child is physically present at the operation.
- (4) Adult--A person 18 years old and older.
- (5) Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.
- (6) Attendance--When referring to a child's attendance, the physical presence of a child at the operation on any given day or at any given time, as distinct from the child's enrollment in the operation.
- (7) Before or After-school program--An operation that provides care before and after or before or after the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend pre-kindergarten through grade six.
- (8) Caregiver--A person who is counted in the child/caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor (see Division 5 of Subchapter D (relating to Substitutes, Volunteers, and Contractors)).
- (9) Certified Child-Care Professional Credential--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.
- (10) Certified lifeguard--A person who has been trained in life saving and water safety by a

qualified instructor, from a recognized organization which awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate represents the type of training described.

(11) CEUs (continuing education units)--A standard unit of measure for adult education and training activities. One CEU equals ten clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(12) Child Development Associate Credential--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(13) Clock hours--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual/s as specified in §744.1319(a) of this title (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual/s as specified in §744.1319(a) and (b).

(14) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting, slapping, or thumping a child.

(15) Days--Calendar days, unless otherwise stated.

(16) Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the operation staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, all directors, and the owner, if the owner is ever on site at the operation or transports a child.

(17) Director--An adult you designate to have daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards, rules, and laws. As this term is used in this chapter, a director may be an operation director, program director, or site director, unless the context clearly indicates otherwise.

(18) Enrollment--The list of names or number of children who have been admitted to attend an operation for any given period of time; the number of children enrolled in an operation may vary from the number of children in attendance on any given day.

(19) Entrap--A component or group of components on equipment that forms angles or openings that could trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(20) Field trips--Activities conducted away from the operation.

(21) Food service--The preparation or serving of meals or snacks.

(22) Frequently--See the definition for "regularly or frequently present at an operation" at §745.601 of this title (relating to What words must I know to understand this subchapter?).

(23) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(24) Governing body--A group of persons or officers of a corporation or other type of business entity having ultimate authority and responsibility for the operation.

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(25) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(26) Health-care professional--A licensed physician, licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nurse Examiners, a licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(27) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(28) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(29) Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(30) Janitorial duties--Those duties that involve the cleaning and maintenance of the operation's building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(31) Local sanitation official--A sanitation official designated by the city or county government.

(32) Multi-site operations--Two or more operations owned by the same person or entity, but the operations have separate permits. These operations may have centralized business functions, record keeping, and leadership.

(33) Natural environment--Settings that are natural or normal for all children of an age group without regard to ability or disability. For example, the primary natural group setting for a school-age child with a disability would be a play group, program, or whatever setting exists for school-age children without disabilities.

(34) Nighttime care--Care given on a regular or frequent basis to children who are starting or continuing their night sleep, or to children who spend the night or part of the night at the operation between the hours of 9:00 p.m. and 6:00 a.m.

(35) Operation--A person or entity offering a before or after-school program or school-age program that is subject to Licensing's regulation. An operation includes the building and the premises where the program is offered, any person involved in providing the program, and any equipment used in providing the program.

(36) Operation director--A director at your operation who is not supervised by a program director. An operation that has an operation director cannot have a program director or a site

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director.

(37) Owner--The sole proprietor, partnership, corporation, or other type of business entity who owns the operation.

(38) Permit holder--The owner of the operation that is granted the permit.

(39) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your:

(A) Operation voluntarily closes;

(B) Operation must close because of an enforcement action in Subchapter L of Chapter 745 (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Operation must close because its permit is automatically revoked according the Human Resources Code §§42.048(e), 42.052(j), or 42.054(f).

(40) Premises--Includes the operation, any lots on which the operation is located, any outside ground areas, any outside play areas, and the parking lot.

(41) Program--The services and activities provided by an operation.

(42) Program director--A director who oversees your program at multi-site operations and supervises a site director at each operation.

(43) Regular--On a recurring, scheduled basis.

(44) Regularly or frequently present at an operation--See §745.601 of this title (relating to What words must I know to understand this subchapter?).

(45) Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(46) Sanitize--The use of a product (usually a disinfecting solution) that is registered by the Environmental Protection Agency (EPA) which substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing (paying attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that children are likely to place in their mouths; and

(D) Allowing the surface or item to air-dry.

(47) School-age child--A child who is five years of age and older, and who will attend school at or away from the operation beginning in August or September of that year.

(48) 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 who attend 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.

(49) Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete the lessons or modules. Lessons or modules

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commonly include questions with clear right and wrong answers. Examples of this type of training include self-paced web-based training, written materials, or a combination of video or web-based training and written materials.

(50) Site director--A director who has on-site responsibility at a specific operation, but who is supervised by a program director.

(51) Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large and/or small muscles, learning, talking, communicating, self-help, social skills, emotional well-being, seeing, hearing, and breathing.

(52) State or local fire marshal--A fire official designated by the city, county, or state government.

(53) Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(54) Water activities--Related to the use of swimming pools, splashing/wading pools, sprinkler play, or other bodies of water.

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DIVISION 1 PERMIT HOLDER RESPONSIBILITIES

§744.201. What are my responsibilities as the permit holder?

You are responsible for the following:

- (1) (No change.)
- (2) Developing written personnel policies, including job descriptions, job responsibilities, and requirements;
- (3) Making provisions for training that comply with Division 4, Subchapter D of this chapter (relating to Professional Development [~~Personnel~~]);
- (4) - (5) (No change.)
- (6) Ensuring all information related to background checks is kept confidential, as required by the Human Resources Code §40.005(d) and (e);
- (7) Ensuring parents have the opportunity to visit the operation any time during your hours of operation to observe their child, program activities, the building, the premises [~~grounds~~], and the equipment without having to secure prior approval;
- (8) Maintaining liability insurance, as required by the Human Resources Code[~~]~~ §42.049, if we license you to care for 13 or more children;
- (9) Complying with the child-care licensing law found in Chapter 42 of the Human Resources Code, the applicable minimum standards, and other applicable rules in the Texas Administrative Code; [~~and~~]
- (10) Reporting to DFPS any Department of Justice substantiated complaints related to Title III of the Americans [~~American~~] with Disabilities Act, which applies to commercial public accommodations; and [-]
- (11) Ensuring the total number of children in care at the operation or away from the operation, such as during a field trip, never exceeds the licensed capacity of the operation.

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DIVISION 2 REQUIRED NOTIFICATIONS

§744.301. What changes regarding my operation must I notify Licensing about before making the change?

You must notify us in writing before:

- (1) Changing the address or location of the operation;
- (2) - (6) (No change.)
- (7) Offering new services relating to minimum standards found in this chapter, such as nighttime care, transportation, or field trips;
- (8) Planned closure of five consecutive days or more, during designated hours of operation, when the operation is not caring for children, with the exception of nationally recognized holidays; [ø]
- (9) Going out of business; or [-]
- (10) There is a change in the ownership of an operation as specified in §745.437 of this title (relating to What is a change in ownership of an operation?).

§744.303. What changes must I notify Licensing of regarding the operation's designee, governing body, and directors[-, a director, or the program at my operation]?

You must notify us in writing no later than five days after a change is made regarding:

- [~~(1) Sale or transfer of the operation's ownership (including but not limited to incorporation of an existing operation);~~]
- (1)[~~(2)~~] The [governing body] designee of an operation that is not a sole proprietorship. The designee for a sole proprietorship is the sole proprietor;
 - (2) [~~(3)~~] The board chair for a corporate facility or other executive officer of the governing body;
 - (3) [~~(4)~~] The address of the operation's [governing body or its] designee or governing body; and
 - (4) [~~(5)~~] A director.

§744.305. What other situations require notification to Licensing?

- (a) You must notify us as soon as possible, but no later than two days after:
 - (1) Any occurrence that renders all or part of your operation unsafe or unsanitary for a child[-, for example loss of electricity or water, or weather related damage that prevents the safe use of the operation];
 - (2) - (6) (No change.)
- (b) (No change.)

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DIVISION 3 REQUIRED POSTINGS

§744.401. What items must I post at my operation at all times?

You must post the following items:

(1) - (4) (No change.)

(5) The activity plan for each group of children, if required by §744.2005 of this title (relating to Must caregivers have written activity plans?);

(6) [~~5~~] The daily menu, if applicable, including all snacks and meals prepared or served by the operation;

(7) [~~6~~] The Licensing *Parent Notification Poster*;

(8) [~~7~~] Telephone numbers specified in §744.405 of this title (relating to What telephone numbers must I post and where must I post them?);

(9) [~~8~~] A list of each child's food allergies that require an emergency plan, as specified in §744.2669 of this title (relating to When must I have a food allergy emergency plan for a child?); and

(10) [~~9~~] Any other Licensing notices with specific instructions to post the notice.

§744.405. What telephone numbers must I post and where must I post them?

(a) You must post the following telephone numbers:

(1) 911 or, if 911 is not available in your area, you must post the telephone numbers for:

(A) - (C) (No change.);

(2) (No change.);

(3) The Texas Abuse and Neglect Hotline (1-800-252-5400) [~~DFPS child abuse hotline~~];

(4) The local [Nearest] Licensing office telephone number [and address]; and

(5) The operation's telephone number, [operation] name, and address[~~and telephone number~~].

(b) (No change.)

(c) If you use cellular phone service at your operation, you must ensure dialing 911 directs emergency personnel to the address or location of your operation [~~location~~].

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DIVISION 4 OPERATIONAL POLICIES

§744.501. What written operational policies must I have?

You must develop written operational policies and procedures that at a minimum address each of the following:

- (1) (No change.)
- (2) Procedures for the release of children;
- (3) (No change.)
- (4) Procedures for dispensing medication or a statement that medication is not dispensed [~~given~~];
- (5) - (6) (No change.)
- (7) Discipline and guidance [~~practices~~] that is consistent with Subchapter G of this title (relating to Discipline and Guidance). A copy of Subchapter G may be used for your discipline and guidance policy, unless you use disciplinary and training measures specific to a skills-based program, as specified in §744.2109 of this title (relating to May I use disciplinary measures that are fundamental to teaching a skill, talent, ability, expertise, or proficiency?);
- (8) Suspension and expulsion of children;
- (9) [~~8~~] Meals and food service practices;
- (10) [~~9~~] Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;
- [~~10~~] Tuberculin testing requirements;
- (11) - (15) (No change.)
- (16) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;
- (17) [~~16~~] The procedures for parents to review and discuss with the director any questions or concerns about the policies and procedures of the operation;
- (18) [~~17~~] The procedures for parents to visit the operation at any time during your hours of operation to observe their child, program activities, and the building, the premises [~~grounds~~], and equipment without having to secure prior approval;
- (19) [~~18~~] The procedures for parents to participate in the operation's activities;
- (20) [~~19~~] The procedures for parents to review a copy of [~~the minimum standards and~~] the operation's most recent Licensing inspection report and how the parent may access the minimum standards online;
- (21) [~~20~~] Instructions on how a parent may contact the local Licensing office, Texas Abuse and Neglect Hotline [~~DFPS child abuse hotline~~], and DFPS website;
- (22) [~~21~~] Emergency preparedness plan;
- (23) [~~22~~] Procedures for conducting health checks, if applicable; and
- (24) [~~23~~] Vaccine-preventable diseases for employees, unless your operation is in the home of the permit holder, the director, or a caregiver. The policy must address the requirements

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outlined in §744.2581 of this title (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

§744.503. Must I provide parents with a copy of my operational policies?

Yes. On or before the date of admission, the parents [~~Parents~~] must sign a child-care [~~an~~] enrollment agreement or other similar documents, which must include [~~document that includes~~] at least the operational policies listed in this division [~~on or before the date of admission~~]. You must keep this signed document in the child's record or at least one for each family, if siblings are enrolled at the same time.

§744.505. What must I do when I change an operational policy or an item in the child-care enrollment agreement?

When you change an operational policy or your child-care enrollment agreement, you [~~You~~] must notify:

- (1) Your employees of any changes; and
- (2) The parents in writing of any changes [~~to your operational policies and enrollment agreement~~]. At least one copy of the updated operational policies or child-care enrollment agreement must be signed and dated for each family [~~-You must keep the updated information~~] and kept in the child's record.

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DIVISION 4	OPERATIONAL POLICIES

~~§744.507. Must I provide a copy of my operational policies to my employees?~~

~~Yes. You must share a copy of your operational policies with all employees as specified in Subchapter C of this chapter (relating to Record Keeping).~~

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SUBCHAPTER C RECORD KEEPING
DIVISION 1 RECORDS OF CHILDREN

§744.603. What records must I have for children in my care and how long must I keep them?

(a) You must maintain the following records for each child enrolled in your operation:

(1) A child-care [An] enrollment agreement specified in §744.503 of this title (relating to Must I provide parents with a copy of my operational policies?);

(2) Admission information as specified in §744.605 of this title (relating to What admission information must I obtain for each child?);

(3) (No change.)

(4) Tuberculosis screening and [Tuberculin] testing information, if required by your regional Texas Department of State Health Services or local health authority [applicable];

(5) Licensing Incident/Illness Report form, if applicable;

(6) A daily tracking system for when a child's care begins and ends [Sign-in and sign-out tracking information] as specified in §744.627 of this title (relating to Must I have a system for signing children in and out of my care?);

(7) Medication administration records, if applicable; and

(8) A copy of any health-care professional recommendations or orders for providing specialized medical assistance to the child. In some instances, minimum standards allow for a deviation from a minimum standard with written documentation from a health-care professional. You must also maintain this written documentation.

(b) (No change.)

§744.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to the operation:

(1) - (7) (No change.)

(8) Permission for transportation, if provided, including any authorized pick-up and drop-off locations;

(9) - (16) (No change.)

§744.613. What immunizations must a child [are children] in my care [required to] have?

(a) Each child enrolled or admitted to your operation must meet and continue to meet applicable immunization requirements specified by the Texas Department of State Health Services (DSHS) [as specified in 25 TAC Chapter 97, Subchapter B (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education)]. This requirement applies to all children in care through 14 years of age.

(b) You must maintain current immunization records for each child in your care, including any immunization exemptions or exceptions.

(c) ~~(b)~~ All [Except as otherwise provided in this division, all] immunizations required for the child's age must be completed by the date of admission, unless:

(1) The child is exempt or excepted from an immunization, and you verify the exemption

or exception by the date of admission; or

(2) The child is homeless or in foster care and is provisionally admitted for up to 30 days because evidence of immunization is not available. You should immediately refer the child to an appropriate health-care professional to obtain the required immunizations. The DSHS rule at 25 TAC §97.66 (relating to Provisional Enrollment for Students) establishes the guidelines for a provisional enrollment.

§744.615. What exemptions or exceptions are there concerning immunization requirements?

(a) A child may be exempt from immunization requirements for a medical reason or reason of conscience, including a religious belief. To claim an exemption, the person applying for the child's admission must meet criteria specified by the Department of State Health Services (DSHS) rule at 25 TAC §97.62 (relating to Exclusions from Compliance).

(b) For some diseases, a child who previously had a disease and is accordingly naturally immune from it may qualify for an exception to the immunization requirements for the disease. To claim this exception, the person applying for the child's admission must meet the criteria specified by the DSHS rule at 25 TAC §97.65 (relating to Exceptions to Immunization Requirements).

§744.623. What documentation is acceptable for immunization records?

Acceptable documentation includes:

(1) A signed statement from the child's parent that the child's immunization record is current and on file at the pre-kindergarten or school that the child attends. The statement must be dated and include the name, address, and telephone number of the pre-kindergarten or school listed in the statement; [ø]

(2) An official immunization record generated from a state or local health authority, such as a registry, a record received from school officials, including a record from another state, or the health passport for a child in the conservatorship of DFPS, so long as the records includes:

(A) The child's name and date of birth;

(B) The type of vaccine and number of doses; and

(C) The month, day, and year the child received each vaccination; or

(3) An official immunization record or photocopy, such as from a doctor's office, that includes:

(A) The child's name and date of birth;

(B) The type of vaccine and number of doses;

(C) The month, day, and year the child received each vaccination; and

(D) The signature (including a rubber stamp or electronic signature) of the health-care professional who administered the vaccine, or another health-care professional's documentation of the immunization as long as the name and address of the health-care professional that administered the vaccine is documented. [An official immunization record generated from a state or local health authority, such as a registry, or a record received from school officials including a record from another state, that includes the child's name and birth date; the number of doses and vaccine type; the month, day, and year the child received each vaccination; and the signature or stamp of the physician or other health care professional who administered the vaccine.]

§744.627. Must I have a system for signing children in and out of my care?

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(a) Yes. You must have a tracking system for [~~tracking~~] each child coming and going from your operation throughout the day. This tracking system must include the name of each child;[;] the date, time of arrival, and time of departure;[;] and the employee or parent's initials or other unique identifier [~~identification code~~].

(b) (No change.)

[~~(e) You must keep tracking information for the previous three months and make it available to Licensing for review upon request.~~]

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~~§744.615. Are there exemptions for immunization requirements?~~

~~Yes; however, exemptions for immunization requirements must meet criteria specified by the Department of State Health Services rules in 25 TAC §97.62 (relating to Exclusions from Compliance).~~

~~§744.617. Where can I find more information on immunizations?~~

~~You can find more information in the Department of State Health Service's rules at 25 TAC Chapter 97, Subchapter B (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education). You can access it on the Department of State Health Services Internet website at: www.dshs.state.tx.us/immunize, or you may obtain a copy from Licensing or your local or state health department.~~

~~§744.619. When must I have the child's immunization record on file?~~

~~You must have a copy of the child's completed immunization record by the date of admission, except as otherwise provided in this division.~~

~~§744.621. May I admit a child who is not current on immunizations?~~

~~Yes; however, you must comply with the rules for provisional admittance established by the Department of State Health Services rules in 25 TAC §97.66 (relating to Provisional Enrollment for (Non Higher Education; Non Veterinary) Students)).~~

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DIVISION 2	RECORDS FOR ACCIDENTS AND INCIDENTS

§744.703. Where can I get a copy of Licensing's *Incident/Illness Report* form?

You may obtain a copy of the form from Licensing staff or on the DFPS website at:

~~http://www.dfps.state.tx.us/Child_Care/Information_for_Providers/celforms-de.asp~~

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§744.705. Must someone from my operation sign the *Incident/Illness Report* form?

Yes. After the caregiver completes the form, the [The] director of the operation or, if the director is not available, the person designated to be in charge of the operation must sign and date the completed report.

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SUBCHAPTER C RECORD KEEPING
DIVISION 3 RECORDS THAT MUST BE KEPT ON FILE AT THE OPERATION

§744.801. What records must I keep at my operation?

You must maintain and make the following records available for our review upon request, during your hours of operation. Paragraphs (13), (14), and (15) [~~(18), (19), and (20)~~] of this section are optional, but if provided, allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by other state agencies within the past year:

- (1) (No change.)
- (2) Personnel and training records [~~unless on file at a central administrative location~~];
- (3) (No change.)
- (4) Attendance records or time sheets listing all days and hours worked for each employee [~~employees~~];
- [~~(5) Children's program activity plans for each age group in care for more than four hours per day;~~]
- (5) [~~(6)~~] Verification of liability insurance or notice of unavailability, if applicable;
- [~~(7) Proof of request for all background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);~~]
- [~~(8) Daily menus for food prepared or served by the operation;~~]
- (6) [~~(9)~~] Medication records, if applicable;
- (7) [~~(10)~~] Playground maintenance checklists;
- (8) [~~(11)~~] Pet vaccination records, if applicable;
- (9) [~~(12)~~] Safety [~~Fire safety~~] documentation for emergency drills, fire extinguishers, and smoke detectors;
- [~~(13) Most recent Licensing inspection report, letter, or notice requiring posting;~~]
- (10) [~~(14)~~] Most recent fire inspection report, including any written approval from the fire marshal to provide care above or below ground level, if applicable;
- (11) [~~(15)~~] Most recent sanitation inspection report, if applicable;
- (12) [~~(16)~~] Most recent gas inspection report, if applicable;
- (13) [~~(17)~~] Most recent Department of State Health Services' immunization compliance review form, if applicable;
- (14) [~~(18)~~] Most recent Texas Department of Agriculture Child and Adult Care Food Program (CACFP) report, if applicable;
- (15) [~~(19)~~] Most recent local workforce board Child-Care Services contractor inspection report, if applicable;
- (16) [~~(20)~~] Record of pest extermination, if applicable; and
- [~~(21) Written approval from the fire marshal to provide care above or below ground level, if applicable; and~~]
- (17) [~~(22)~~] A daily tracking system for [~~System to track~~] when a child's care begins and ends as specified in §744.627 of this title (relating to Must I have a system for signing children in and out of my care?) [~~daily~~].

§744.803. How long must I keep [~~these~~] records at my operation?

(a) If you are required to post or keep a record in this chapter, you must keep the record at your operation for at least three months from the date the record was created unless otherwise stated. [~~You must keep records at the operation for at least three months from the date the record was created, unless otherwise stated in this chapter.~~]

(b) You must keep training records for each current director and caregivers [~~caregiver~~] for at least the current and last full training year.

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DIVISION 4	PERSONNEL RECORDS

~~§744.903. What additional personnel records must I maintain for a director?~~

~~In addition to the personnel records that must be maintained for all operation personnel, you must have the original Licensing *Director's Certificate* for your director. If a director is also the permit holder, a statement showing the director has received a copy of the operational policies and personnel policies is not required.~~

~~§744.905. Must I maintain attendance records or record of hours worked on my employees?~~

~~Yes. You must maintain a record of attendance or other record indicating all days and hours worked for each director, employee, caregiver, substitute, and volunteer who is regularly or frequently at the operation during your hours of operation.~~

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§744.909. May Licensing access my personnel records?

Yes. Licensing staff must be given immediate access to all personnel records that document compliance with minimum standards. You must allow Licensing to photograph, copy, or scan [~~photocopy~~] these records if requested.

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DIVISION 1 DIRECTOR

§744.1001. Am I required to have a director for my operation?

(a) You are required to designate an adult that has the daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards and Licensing laws. [~~You must notify Licensing of changes in directors as specified in §744.303 of this title (relating to What changes must I notify Licensing of regarding the governing body, a director, or the program at my operation?)-]~~

(b) There are three types of recognized directors in a before and after-school or school-age program:

- (1) (No change.)
 - (2) A program director, who oversees your program at multi-site [~~multiple~~] operations and supervises a site director at each operation;
 - (3) (No change.)
- (c) (No change.)

§744.1003. If I have multiple operations, must I designate a director for each operation?

(a) If you have multi-site [~~multiple~~] operations [~~under the same governing body~~], you must designate a director at each operation. However, a site director may share his responsibilities at an operation with a program director, provided the operation maintains substantial compliance with minimum standards and other relevant law.

(b) A program director may supervise no more than:

- (1) Nine site directors at multi-site [~~multiple~~] before and after-school care programs [~~operated by the same governing body~~]; or
- (2) Five site directors at multi-site school-age [~~multiple school-age~~] programs or at a combination of school-age [~~school-age~~] programs and before and after-school programs [~~operated by the same governing body~~].

§744.1015. What qualifications must an operation director or a program director meet?

[~~(a)~~] Except as otherwise provided in this division, an operation director or program director must be at least 21 years of age, have a high school diploma or its equivalent, and meet one of the following combinations of education and experience:

Education	Experience
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<p>(1) A bachelor's degree with six college credit hours in management,</p>	<p>and at least one year of experience in a licensed operation or similar experience as specified in §744.1021 of this title (relating to What types of experience may count towards meeting director qualifications?);</p>
<p>(2) An associate's of applied science degree in child development or a closely related field with six college credit hours in child development and six college credit hours in management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years,</p>	<p>and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title;</p>
<p>(3) Sixty college credit hours with nine college credit hours in child development and six college credit hours in management,</p>	<p>and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title, or instructor certification and one year experience in training others in a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program;</p>
<p>(4) A Child Development Associate credential or Certified Child-Care Professional credential with six college credit hours in management,</p>	<p>and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title;</p>
<p>(5) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in management,</p>	<p>and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title;</p>
<p>(6) A day-care administrator's credential issued by a professional organization or an educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title (relating to Day-Care Administrator's Credential Program),</p>	<p>and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title; or</p>

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(7) Nine college credit hours in child development and nine college credit hours in management,	and at least three years of experience in a licensed operation or similar experience as specified in §744.1021 of this title, or instructor certification and one year experience in training others in a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program.
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~~[(b) Options (4) and (6) in subsection (a) of this section require periodic renewal for the director to remain qualified.]~~

§744.1017. What qualifications must a site director meet?

(a) - (b) (No change.)

(c) A site director may complete the required education during the ~~[his]~~ first 90 days of employment, if:

(1) The site director completed at least half of the required education prior to beginning work ~~[his current employment]~~ as the site director; and

(2) You provide Licensing a written plan describing the oversight the program director will be providing the site director until the required education is completed. If applicable, the plan must include the sharing of director responsibilities as [The written plan] required in §744.1005(b) of this title (relating to What are the director's responsibilities?) ~~[includes appropriate program director oversight until the required education is completed].~~

§744.1023. Can Licensing verify whether someone has sufficient experience?

Yes. To determine whether a person has sufficient experience to qualify as a director, we may, at our own discretion, verify the person's child-care ~~[your]~~ experience and substitute child-care experience via the Internet, telephone or mail contact with previous employer(s), or through our records.

§744.1029. What documentation must I provide to Licensing to show that my director has an acceptable child development and management education?

If requested by Licensing, you must provide original transcripts and supporting documentation, such as a credit course catalog description or a course syllabus or outline, so that Licensing may determine whether the course is recognized as child development or management.

§744.1035. May clock hours or CEUs (continuing education units) ~~[(CEUs)]~~ be substituted for any of the educational requirements ~~[in any of the options specified]~~ in this division?

(a) Clock ~~[You may only substitute clock]~~ hours or CEUs may only be substituted for the required credit hours in child development and management.

(b) ~~[You may substitute]~~ 50 clock hours or five CEUs may only be substituted for every ~~[each]~~ three college credit hours required in child development and/or management.

(c) The documentation to verify the clock hours or CEUs must be as specified in §744.1331

of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?).

§744.1037. What additional ~~[kind of]~~ documentation must I submit to Licensing to show my director is qualified and when must I submit it?

(a) In addition to showing that your director meets the minimum qualifications for an employee (and minimum qualifications for a caregiver, if applicable), you ~~[You]~~ must submit the following for each director at your operation:

(1) (No change.)

~~[(2) A completed Licensing Request for Criminal History and Central Registry Check form or proof a background check request was made online;]~~

~~[(3) A notarized Licensing Affidavit for Applicants for Employment form;]~~

(2) ~~[(4)]~~ A completed Licensing *Governing Body/Director Designation* form; and

(3) ~~[(5)]~~ An original and current Licensing *Director's Certificate* form, or an original college transcript or original training certificates which verify the educational requirements; and complete dates, names, addresses, and telephone numbers which support the required experience. Original letters may be substituted for training certificates, provided they include the same information as specified in §744.1331 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?).

(b) You must submit the information to us:

(1) As part of a new application for a permit; or ~~[and]~~

(2) Within five ~~[ten]~~ days of designating a new operation director, program director, or site director.

§744.1051. Will a ~~[the]~~ director's certificate expire?

(a) An operation ~~[The]~~ director's certificate or program director's certificate will expire ~~[have an expiration date,]~~ if the operation director or program director was qualified under ~~§744.1015(a)~~ options (4) or (6) of §744.1015 of this title (relating to What qualifications must an operation director or a program director meet?). Otherwise, an operation director's certificate and a program director's certificate ~~[the Licensing Director's Certificate]~~ will not expire.

(b) A site director's certificate will not expire.

§744.1053. How often must an expiring certificate be renewed?

If an operation director or program director qualifies under ~~[you qualify under §744.1015(a);]~~ options (4) or (6) of §744.1015 of this title (relating to What qualifications must an operation ~~[the]~~ director or program director meet?), the operation director or program director ~~[you]~~ must maintain the ~~[your]~~ credential according to the issuing organization's or educational institution's requirements. The ~~[You]~~ director with the certificate ~~with the certificate~~ must submit to us a copy of a letter or other documentation confirming the credential is current before we can renew the ~~[your]~~ *Director's Certificate*.

§744.1055. What happens if my operation director's or program director's credential expires ~~[I do not submit the documentation confirming the credential is current]~~?

We will give you a deadline for your operation director or program director to submit the required documentation or for you to designate another qualified director. If your operation

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director or program director allows the certificate to expire without submitting the required documentation, then your operation will ~~[and]~~ no longer meet the minimum standards ~~[meets requirements]~~ for that ~~[a center]~~ director position ~~[, you violate minimum standards]~~.

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~~§744.1019. Are any directors exempt from the qualifications?~~

~~(a) A current director who was a designated director of a DFPS licensed group day care home before May 1, 1985, is not required to have a high school diploma or its equivalent, and is exempt from the requirements specified in §744.1015 of this title (relating to What qualifications must an operation director or a program director meet?) and §744.1017 of this title (relating to What qualifications must a site director meet?).~~

~~(b) A current director who was a designated director before September 1, 2003, of a DFPS licensed group day care home, school: grades kindergarten and above, kindergarten and nursery school, or drop in care center is exempt from the requirements specified in §744.1015 and §744.1017 of this title.~~

~~(c) If a current director under exemption changes jobs after September 1, 2010, he must meet director qualifications specified in this subchapter before being designated as a director in a new position.~~

~~§744.1029. What are clock hours?~~

~~Clock hours may consist of documented attendance at:~~

- ~~(1) Seminars, workshops, conferences, and early childhood classes;~~
- ~~(2) Self-instructional programs; or~~
- ~~(3) Planned learning opportunities provided by consultants, a qualified director, or by a child-care association~~

~~§744.1031. Must the trainer or provider of clock hours meet specific criteria?~~

~~We do not have specific criteria established for someone to be a trainer or provider of clock hours.~~

~~§744.1033. What are CEUs?~~

~~Continuing education units (CEUs) provide a standard unit of measure for adult education and training activities. One CEU equals ten clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although you may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.~~

~~§744.1039. What documentation must I have to prove that the person received the clock hours or CEUs?~~

~~You must have documentation specified in §744.1331 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?).~~

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~~§744.1041. What documentation must I provide to Licensing to show that my director has acceptable child development and management education?~~

~~If requested by Licensing, you must provide original transcripts or training certificates. Supporting documentation, such as credit course catalog descriptions, or a course syllabus or outline may also be requested by Licensing to assist in determining whether the course is recognized as child development or management.~~

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DIVISION 2 EMPLOYEES AND CAREGIVERS

~~§744.1101. What is the difference between an employee and a caregiver?~~

~~(a) An employee is any person employed by the operation, including caregivers, kitchen, office, or maintenance personnel; other personnel; a director.~~

~~(b) A caregiver is an employee counted in the child/caregiver ratio, whose duties include direct care, supervision, guidance, training, and the protection of children in care.~~

~~§744.1111. What does Licensing mean by the term "high school equivalent"?~~

~~(a) A high school equivalent is a program recognized by the Texas Education Agency or other public educational entity outside of Texas, which offers training similar to reading, writing, and problem-solving skills taught at the high school level, such as a General Educational Development certificate.~~

~~(b) You must provide original documentation to us to verify completion of any high school equivalency program.~~

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DIVISION 2 EMPLOYEES AND CAREGIVERS

§744.1103. What minimum qualifications must each of my employees meet?

Each employee [~~who is regularly or frequently present while children are in care~~] must:

(1) (No change.)

(2) Have a current record of a tuberculosis examination (TB), showing the employee is [~~he is~~] free of contagious TB, if required by the Texas Department of State Health Services or local health authority;

(3) - (4) (No change.)

§744.1105. What additional minimum qualifications must each of my caregivers meet?

Except as otherwise provided in this division, each caregiver [~~employee counted in the child/caregiver ratio~~] must comply with minimum standards for employees and must:

(1) (No change.)

(2) Have a:

(A) (No change.)

(B) High school equivalent, including documentation:

(i) Of a program recognized by the Texas Education Agency or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(ii) That verifies home-schooling that adequately addressed basic competencies necessary for the person to obtain a high-school diploma or GED, including basic reading, writing, and math skills; or

(C) (No change.)

(3) (No change.)

§744.1107. Under what circumstances may I employ a person under the age of 18 or a person who does not have a high school diploma or equivalent as a caregiver?

(a) You may employ a 16 or 17-year-old who has a high school diploma or its equivalent and count the person in the child/caregiver ratio, provided that:

(1) You don't leave the person alone with sole responsibility for or in charge of an individual child, a group of children, or the operation [~~or a group of children~~];

(2) (No change.)

(3) The person has completed a child-care-related career program, which:

(A) The Texas Education Agency (including a charter school), the Texas Private School Accreditation Commission, other similar educational entity in another state, or federal agency approves; or

(B) A home-school approves, and the person completes the eight hours of pre-service training before being placed in a room with children [~~the Texas Education Agency or another~~]

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~~state or federal agency approves~~].

(b) You may employ a 16-, 17-, or 18-year-old who attends high school but has not graduated and count the person in the child/caregiver ratio, provided that:

(1) You do not leave the person alone with sole responsibility for or in charge of an individual child, a group of children, or the operation;

(2) The person works in the same room with and is supervised by a caregiver qualified under §744.1105 ~~[of this title]~~;

(3) The person is currently enrolled in or has completed a child-care-related career program, ~~which:~~ ~~[that]~~

(A) The [the] Texas Education Agency (including a charter school), the Texas Private School Accreditation Commission, other similar educational entity in [or] another state, or federal agency approves; or [and]

(B) A home-school approves, and the person completes the eight hours of pre-service training before being placed in a room with children;

(4) The person is expected to obtain a high school diploma or equivalent.

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DIVISION 3 GENERAL RESPONSIBILITIES FOR PERSONNEL

§744.1203. What additional responsibilities do my caregivers [~~counted in the child/caregiver ratio~~] have?

In addition to the responsibilities for employees specified in this division, caregivers [~~counted in the child/caregiver ratio~~] must:

(1) - (5) (No change.)

(6) Be free from activities not directly involving the teaching, care, and supervision of children, such as:

(A) Administrative and clerical duties [~~functions~~] that take the caregiver's attention away from the children;

(B) (No change.)

(C) Janitorial duties [~~, such as mopping, vacuuming, and cleaning restrooms. Sweeping up after an activity or mopping up spills may be necessary for the children's safety and are not considered janitorial duties~~]; and

(D) Personal use of electronic devices, such as cell phones, MP3 players, tablets, and video games;

(7) Interact [~~regularly~~] with children in a positive manner;

(8) - (11) (No change.)

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DIVISION 4 PROFESSIONAL DEVELOPMENT

~~§744.1301. What training must I ensure that my employees have?~~

~~You must make sure that each employee has the following training, as specified in this division:~~

- ~~(1) Orientation to the operation for all employees;~~
- ~~(2) Eight clock hours of pre-service training, or documentation of exemption, for caregivers;~~
- ~~(3) 15 clock hours of annual training for caregivers and site directors;~~
- ~~(4) 20 clock hours of annual training for the operation director and program director; and~~
- ~~(5) CPR and first-aid certification.~~

~~§744.1327. What is self instructional and instructor led training?~~

~~(a) Self instructional training is designed to be used by one individual working alone and at their own pace to complete the lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. Examples include, but are not limited to, self-paced web-based training, written materials, or a combination of video or web-based and written materials.~~

~~(b) Instructor led training is characterized by the communication and interaction that takes place between the learner and the instructor and must include an opportunity for the learner to interact with the instructor to obtain information beyond the scope of the training materials. The instructor must be able to communicate with the learner in a timely and organized fashion, including but not limited to the instructor answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively contacting learners. Examples include, but are not limited to, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.~~

~~(c) Both self instructional and instructor led training must also include the components listed in §744.1319(d) of this title (relating to Must the training for my caregivers and the director meet certain criteria?).~~

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 SUBCHAPTER D PERSONNEL
 DIVISION 4 PROFESSIONAL DEVELOPMENT

§744.1301. What training must I ensure that my employees and caregivers have?

You must make sure that employees and caregivers have the training required in the following chart:

<u>Type of training:</u>	<u>Who is required to take the training?</u>
<u>(1) Orientation to your operation within seven days of employment;</u>	<u>All employees.</u>
<u>(2) Eight clock hours of pre-service training;</u>	<u>Only caregivers, although a caregiver may be exempt from pre-service training as specified in §744.1307 of this title (relating to Are any caregivers exempt from the pre-service training?).</u>
<u>(3) 15 clock hours of annual training;</u>	<u>Only caregivers.</u>
<u>(4) CPR and first-aid training; and</u>	<u>Employees and/or caregivers as specified in §744.1315 of this title (relating to Who must have first-aid and CPR training?).</u>
<u>(5) Transportation training.</u>	<u>Any employee who transports a child whose chronological or developmental age is younger than nine years old, as specified in §744.1317 of this title (relating to What additional training must an employee have in order to transport a child in care?).</u>

§744.1315. Who must have first-aid and CPR training?

(a) - (c) (No change.)

(d) CPR [~~and first-aid~~] training must not be obtained through self-instructional training.

§744.1317. What additional training must an employee [~~a person~~] have in order to transport a child in care?

(a) An employee [~~or owner~~] must complete two hours of annual training on transportation safety in order to transport a child whose chronological or developmental [~~development~~] age is younger than nine years old. This training is in addition to other required training hours.

(b) The employee [~~person~~] must obtain these two hours of transportation safety training prior to transporting children.

§744.1319. Must the training for my caregivers and the director meet certain criteria?

(a) Training may include clock hours or CEUs provided by:

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(1) A training provider registered with the Texas Early Childhood Professional [~~Care and Education Career~~] Development System Training [~~System's Texas Trainer~~] Registry, maintained by the Texas Head Start State Collaboration Office;

(2) - (5) (No change.)

(6) A person who has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) Has a current [~~been awarded a~~] Child Development Associate (CDA) credential;

or

(B) (No change.)

(b) (No change.)

~~[(e) Self instructional training may not be used for CPR or first aid certification.]~~

(c) [~~(d)~~]-All training, including instructor-led and self-instructional training, must include:

(1) Specifically stated learning objectives;

(2) A curriculum, which includes experiential or applied activities;

(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate of successful completion from the training source.

§744.1321. Does Licensing approve training resources or trainers for training hours?

No. We do not approve or endorse training resources or trainers for training hours. But you must [~~You should, however,~~] ensure you and your employees receive [relevant] training that:

(1) Meets the criteria specified in §744.1319 of this title (relating to Must the training for my caregivers and the director meet certain criteria?);

(2) Is relevant to the [~~from reliable resources, in~~] topics specified in this division;[;] and

(3) The [~~that~~] participants receive original documentation of completion, as specified in this division.

§744.1325. If I hire a caregiver or a director that received training at another operation, may these hours count towards the annual training requirement at my operation?

If the caregiver or director is able to provide documentation of training, as specified in §744.1331 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?), obtained from another child day-care [~~child day care~~] operation that we regulate within two months before coming to work for your operation, this training may apply toward the annual training requirement. [~~If you apply this training to the annual training requirement, you must adjust the annual training year due dates for this person accordingly~~].

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DIVISION 5 VOLUNTEERS, SUBSTITUTES, AND PERSONS UNDER
 CONTRACT

~~[\§744.1401. With what minimum standards must substitutes comply?~~

~~(a) Substitutes counted in the child/caregiver ratio, whether paid or unpaid, are considered caregivers and must comply with minimum standards that apply to employees and caregivers, except as otherwise provided in this division.~~

~~(b) Substitutes not counted in the child/caregiver ratio, whether paid or unpaid, must comply with minimum standards that apply to employees, except as otherwise provided in this division.]~~

~~[\§744.1403. With what minimum standards must volunteers or any person under contract with the operation comply?~~

~~(a) Volunteers and any person under contract with the operation, whether paid or unpaid, who are regularly or frequently present at the operation but not counted in the child/caregiver ratio, must comply with minimum standards that apply to employees.~~

~~(b) Volunteers and any person under contract with the operation, whether paid or unpaid, who are regularly or frequently present at the operation and counted in the child/caregiver ratio, must comply with minimum standards that apply to employees and caregivers.~~

~~(c) Volunteers and any person under contract with the operation that do not meet caregiver qualifications, whether paid or unpaid, must never be left alone with children.]~~

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DIVISION 5 SUBSTITUTES, VOLUNTEERS, [SUBSTITUTES,] AND
CONTRACTORS [~~PERSONS UNDER CONTRACT~~]

§744.1401. What minimum standards must substitutes, volunteers, or persons under contract with my operation comply with?

(a) For purposes of this rule:

(1) Persons under contract with your operation are "contractors"; and

(2) It does not matter if a substitute, volunteer, or contractor is paid or unpaid.

(b) Substitutes not counted in the child/caregiver ratio must comply with minimum standards that apply to employees, except as otherwise provided in this division.

(c) Volunteers and contractors who are regularly or frequently present at the operation but not counted in the child/caregiver ratio must comply with minimum standards that apply to employees.

(d) Substitutes, volunteers, and contractors who are counted in the child/caregiver ratio must comply with minimum standards that apply to employees and caregivers, except as otherwise noted in subsection (e) of this section.

(e) Volunteers, including parents, who only supplement the ratios for field trips and water activities do not have to comply with the minimum standards that apply to employees and caregivers, but they do have to comply with the relevant minimum standards in Subchapter E of this chapter relating to (Child/Caregiver Ratios and Group Sizes).

(f) Substitutes, volunteers, and contractors who do not meet caregiver qualifications must never be left alone with children.

(g) All substitutes, volunteers (except for those volunteers noted in subsection (e) of this section), and contractors must complete orientation before beginning the relevant duties.

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SUBCHAPTER F DEVELOPMENTAL ACTIVITIES AND EQUIPMENT
DIVISION 1 ACTIVITIES AND ACTIVITY PLANS

§744.2001. Must caregivers provide planned activities for the children in their care?

(a) (No change.)

(b) In addition, the following activities must be included for programs where children are anticipated to be [who are] in care five or more consecutive hours in a day:

(1) - (3) (No change.)

(4) Regular meal and snack times as specified in Subchapter J of this Chapter (relating to Nutrition and Food Service) [§744.2403 of this title (relating to How often must I feed children in my care?)];

(5) (No change.)

(6) Both:

(A) Child-initiated activities, which are activities that the child chooses on the child's own initiative and that foster the child's independence. Child-initiated activities require equipment, materials, and supplies to be within the reach of a child; and

(B) Caregiver-initiated activities, which are activities that are directed or chosen by the caregiver; [child-initiated and caregiver-initiated activities;]

(7) - (8) (No change.)

(c) (No change.)

§744.2005. Must caregivers have written activity plans?

(a) You must have a written activity plan for programs with children who you anticipate to be [who are] in care for five or more consecutive hours in a day. The plan must outline the daily routines and specific activities for each group and the plan must be followed by the caregiver(s) responsible for that group.

(b) - (c) (No change.)

~~[(d) You must post the written activity plan for each group of children as specified in §744.403 of this title (relating to When and where must these items be posted?).]~~

~~[(e) You must keep a written activity plan at your operation for at least three months. You must make them available for review by Licensing and parents upon request during your hours of operation.]~~

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SUBCHAPTER G DISCIPLINE AND GUIDANCE

[~~§744.2101. What discipline techniques may be used with children in care?~~

~~(a) Each disciplinary measure must:~~

- ~~(1) Be consistent with your policies and procedures;~~
- ~~(2) Not be physically or emotionally damaging to the child;~~
- ~~(3) Be appropriate to the child's age and level of understanding; and~~
- ~~(4) Be appropriate to the incident and severity of the behavior demonstrated.~~

~~(b) The caregiver must explain the reason for the disciplinary measure when the caregiver imposes the measure.]~~

[~~§744.2111. Must I have a written discipline and guidance policy?~~

~~(a) You are required to have a written discipline and guidance policy that complies with the rules in this subchapter. You may use a copy of this subchapter for your written discipline and guidance policy, unless you use disciplinary and training measures specific to a skills-based program, as specified in §744.2109 of this title (relating to May I use disciplinary measures that are fundamental to teaching a skill, talent, ability, expertise, or proficiency?).~~

~~(b) You must provide a copy of your written discipline and guidance policy to parents and employees.]~~

[~~§744.2113. Must I give a copy of my written discipline and guidance policy to parents and my employees?~~

~~(a) You must give a copy of your written discipline and guidance policy or a copy of this subchapter to parents and operation employees as specified in Subchapter B of this chapter (relating to Administration and Communication).~~

~~(b) You must keep documentation showing that all parents and employees have received a copy of your written discipline and guidance policy or a copy of this subchapter. You may do this as a part of your operation's policies or in a separate document.]~~

[~~§744.2115. How often must I update my written discipline and guidance policy?~~

~~You must update your written discipline and guidance policy each time you make changes. You must keep documentation at your operation showing that all parents and employees have received a copy of your revised discipline and guidance policy.]~~

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SUBCHAPTER G DISCIPLINE AND GUIDANCE

§744.2103. What methods of discipline and guidance may a caregiver use?

(a) Each disciplinary measure must:

- (1) Be consistent with your policies and procedures;
- (2) Not be physically or emotionally damaging to the child;
- (3) Be appropriate to the child's age and level of understanding; and
- (4) Be appropriate to the incident and severity of the behavior demonstrated.

(b) A caregiver may only use positive methods of discipline and guidance that encourage self-esteem, self-control, and self-direction, which include at least the following:

- (1) Using praise and encouragement of good behavior instead of focusing only upon unacceptable behavior;
- (2) Reminding a child of behavior expectations daily by using clear, positive statements;
- (3) Redirecting behavior using positive statements; and
- (4) Using brief supervised separation or time out from the group, when appropriate for the child's age and development, which is limited to no more than one minute per year of the child's age.

§744.2105. What types of discipline and guidance or punishment are prohibited?

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

- (1) - (7) (No change.)
- (8) Placing a child in a locked or dark room, bathroom, or closet [~~with the door closed~~]; and
- (9) (No change.)

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SUBCHAPTER H NAPTIME
DIVISION 1 NAPTIME

§744.2207. Must I provide an alternative activity for those children who cannot sleep?
Yes. You must allow each child who is awake after resting or sleeping for 30 minutes [~~one hour~~]
to participate in an alternative, quiet activity until the nap/rest time is over for the other children.

§744.2211. May I lower the lighting in [~~darken~~] the room while children are sleeping?
Yes. You may lower the lighting, provided there is adequate lighting to allow visual supervision
of all children in the group at all times. Lighting in a room is adequate if a person's eyes do not
need to adjust for the person to be able to see upon entering the room.

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SUBCHAPTER I FIELD TRIPS

~~[\§744.2305. Must I have additional caregivers present to take children on a field trip?
Refer to Subchapter E of this chapter (relating to Child/Caregiver Ratios and Group Sizes) for
child/caregiver ratios relating to field trips.]~~

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SUBCHAPTER J NUTRITION AND FOOD SERVICE

§744.2409. May parents provide meals and/or snacks for their children instead of my operation providing these?

(a) - (c) (No change.)

(d) You must ensure [~~meals and~~] snacks provided by a parent and shared with other children meet the needs of children who require special diets.

§744.2411. How should my operation meet the needs of children who require special diets or do not want to eat foods the operation serves [~~we serve~~]?

(a) - (d) (No change.)

§744.2413. Can I make substitutions and/or rotate the [~~Must I post and maintain~~] daily menus?

Yes. [~~When children are in care for five or more consecutive hours per day, you must~~]:

(1) [~~Post daily menus showing all meals and snacks prepared and served by the operation where parents and others can see them as specified in §744.403 of this title (relating to When and where must these items be posted?);~~]

[~~(2) Keep a record of any substitutions made.~~] Substitutions [~~must be~~] of comparable food value may be made to the daily menu, but you must keep a record of any substitutions; and

[~~(3) Date menus and keep copies for review at least the previous three months; and~~]

(2) [~~(4)~~]-You may [~~If you~~] rotate menus, but you must keep a record of which menu was used for each date.

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SUBCHAPTER K HEALTH PRACTICES
DIVISION 1 ENVIRONMENTAL HEALTH

§744.2501. Must my operation have an annual sanitation inspection?

(a) - (b) (No change.)

(c) If an inspection is not available from a local sanitation official, you must:

(1) Obtain documentation from a ~~[state or]~~ local sanitation official or county judge stating that an inspection is not available; and

(2) (No change.)

§744.2505. Do I have to make corrections called for in the report?

Yes. ~~[If required,]~~ you must comply with corrections, restrictions, or conditions specified by the inspector in the sanitation report, letter, or checklist.

§744.2515. When must employees wash their hands?

Employees must wash their hands:

(1) - (5) (No change.)

(6) After handling or cleaning bodily ~~[body]~~ fluids, such as after tending sores and wiping noses, mouths, or bottoms~~[-and tending sores];~~

(7) - (9) (No change.)

(10) After eating, drinking, or smoking; ~~[and]~~

(11) After using any cleaners or toxic chemicals; and

(12) After removing gloves.

§744.2519. How must children and employees wash their hands?

Children and employees must wash their hands with soap and running water. ~~[Pre-moistened towelettes or wipes and waterless hand cleaners are not a substitute for soap and running water.]~~

§744.2520. May I use hand sanitizer as a substitute for washing hands?

You may use hand sanitizers as a substitute for washing hands under the following conditions:

(1) You do not use hand sanitizers to wash hands that are visibly dirty or greasy or have chemicals on them, unless you are away from the classroom and soap and water are not available for hand washing;

(2) You store hand sanitizers out of the reach of children when not in use;

(3) You follow the labelling instructions for the appropriate amount to be used and for how long the hand sanitizer needs to remain on the skin surface to be effective; and

(4) Children have adult supervision when using hand sanitizers.

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DIVISION 1 ENVIRONMENTAL HEALTH

~~[\S744.2501. Must my operation have an annual sanitation inspection?~~

~~(a) Your operation must have a sanitation inspection before we issue your initial permit and at least once every 12 months, unless your operation is located in a public school facility operated by the local independent school district.~~

~~(b) If an inspection is required, a local sanitation official must conduct the inspection.~~

~~(c) If an inspection is not available from a local sanitation official, you must:~~

~~(1) Obtain documentation from a state or local sanitation official or county judge stating that an inspection is not available; and~~

~~(2) Maintain this documentation at the operation and make it available to us upon request.]~~

~~[\S744.2511. What is a disinfecting solution?~~

~~A disinfecting solution may be:~~

~~(1) A self made solution, prepared as follows:~~

~~(A) One tablespoon of regular strength liquid household bleach to each gallon of water used for disinfecting such items as toys and eating utensils; or~~

~~(B) One fourth cup of regular strength liquid household bleach to each gallon of water used for disinfecting surfaces; and~~

~~(C) You must prepare each solution daily and place it in a closed and labeled container;~~

~~or~~

~~(2) A commercial product that is registered with the Environmental Protection Agency (EPA) as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children.]~~

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SUBCHAPTER K HEALTH PRACTICES
DIVISION 2 TOILETING

§744.2551. What steps must caregivers follow for assisting children with toileting?

Caregivers must:

(1) - (4) (No change.)

(5) Place soiled [and wet] clothing in a tied, [individual] sealed, or otherwise closed plastic bag [bags].

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SUBCHAPTER K HEALTH PRACTICES
DIVISION 3 ILLNESS AND INJURY

§744.2571. What type of illness would prohibit a child from attending the operation [~~being admitted for care~~]?

You must not allow an ill child to attend your operation [~~admit an ill child for care~~] if one or more of the following exists:

(1) The illness prevents the child from participating comfortably in the operation [~~program~~] activities, including outdoor play;

(2) (No change.)

(3) The child has one of the following[;] (unless a medical evaluation by a health-care professional indicates that you can include the child in your [~~the~~] operation's [~~program's~~] activities):

(A) An oral [~~Oral~~] temperature above 101 degrees that is [~~and~~] accompanied by behavior changes or other signs or symptoms of illness;

(B) A tympanic (ear) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness. [~~Rectal temperature above 102 degrees and accompanied by behavior changes or other signs or symptoms of illness~~];

(C) An axillary (armpit) [~~Armpit~~] temperature above 100 degrees that is [~~and~~] accompanied by behavior changes or other signs or symptoms of illness; or

(D) (No change.)

(4) (No change.)

§744.2573. What communicable diseases would exclude a child from attending my operation?

You must follow the communicable disease exclusions required for schools as defined by the Texas Department of State Health Services (DSHS) in 25 TAC §97.7 (relating to Diseases Requiring Exclusion from Schools). [~~You can access this information from the Department of State Health Services or Licensing staff.~~]

§744.2576. When may a child who was ill return to my operation?

A child who was ill may return to your operation when:

(1) The child is free of symptoms of illness for 24 hours; or

(2) You have obtained a health-care professional's statement that the child no longer has an excludable disease or condition.

§744.2577. How should caregivers respond to an [~~critical~~] illness or injury that requires the immediate attention of a health-care professional?

For an [~~If critical~~] illness or injury that requires the immediate attention of a health-care

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professional [~~physician~~], you must:

(1) Contact emergency medical services (or take the child to the nearest emergency room after you have ensured the supervision of other children in the group);

(2) - (4) (No Change.)

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SUBCHAPTER L SAFETY PRACTICES
DIVISION 1 SAFETY PRECAUTIONS

§744.2601. What safety precautions must I take to protect children in my operation?

All areas accessible to a child must be free from hazards including, but not limited to, the following:

(1) - (6) (No change.)

(7) All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside; ~~and~~

(8) All bodies of water such as pools, hot tubs, ponds, creeks, birdbaths, fountains, buckets, and rain barrels must be inaccessible to all children; and

(9) All televisions must be anchored, so they cannot tip over. A television may be anchored to a rolling cart, as long as it is anchored in a way that the cart will not tip over.

§744.2603. How can I ensure the safety of the children from other persons?

(a) - (c) (No change.)

(d) People must not smoke or use tobacco products, e-cigarettes, or any type of vaporizers at your ~~the~~ operation, on the premises, on the playground, in transportation vehicles, or during field trips.

§744.2607. Are firearms or other weapons allowed at my operation?

(a) Peace officers as listed in §2.12 of the Code of Criminal Procedure and security officers commissioned by the Texas Private Security Board ~~Law enforcement officials~~ who are trained and certified to carry a firearm on duty may have firearms and ~~or~~ ammunition on the premises of the operation.

(b) For all other persons, firearms, hunting knives, bows and arrows, and other weapons are prohibited on the premises of the operation, unless the operation is also your home ~~residence~~ and except as allowed under subsection (e) of this section.

(c) - (e) (No change.)

§744.2609. May I have ~~other~~ toys or other types of equipment that explode ~~explodes~~ or shoot ~~shoots~~ things?

No. Toys that explode or that shoot things, such as caps, BB guns, darts, or fireworks are prohibited as toys at the operation and on field trips ~~for children in both residential and non-residential locations~~. Toys that explode or shoot things kept on the premises of an operation located in your home must remain in a locked cabinet inaccessible to any child during your hours of operation.

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SUBCHAPTER L	SAFETY PRACTICES
DIVISION 2	MEDICATIONS AND MEDICAL ASSISTANCE

§744.2651. What does "medication" refer to in this division?

In this division, medication means:

- (1) (No change.)
- (2) A non-prescription medication, excluding topical ointments such as insect repellent and sunscreen.

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DIVISION 3	ANIMALS AT THE OPERATION

§744.2701. What steps must I take to have animals at my operation and/or on a field trip?

If you choose to have animals on the premises of your operation and/or on a field trip, you must:

(1) - (4) (No change.)

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DIVISION 1 INDOOR SPACE REQUIREMENTS

§744.2905. Do these indoor activity space requirements apply to my operation if it was licensed before September 1, 2010?

(a) Yes, the only exemption is for operations [~~Indoor activity space requirements for operations licensed before September 1, 2010, vary based on the following:~~]

[~~(1) Operations licensed as a day care center before August 31, 1997, must have at least 30 square feet of indoor activity space for each child you are licensed to serve;~~]

[~~(2) Operations licensed as a day care center or child care center between August 31, 1997, and September 1, 2010, must have at least 30 square feet of indoor activity space for each child you are licensed to serve;~~]

[~~(3)~~] [~~Operations~~] licensed as kindergarten and nursery schools, or schools: grades kindergarten and above, before September 1, 2003. These operations[;] must have at least 20 square feet of indoor activity space for each child [~~you are~~] the operation is licensed to serve.[; and]

[~~(4) Operations licensed as a drop-in center or group day care home before September 1, 2003, must have at least 30 square feet of indoor activity space for each child you are licensed to serve.~~]

(b) The exemption [~~exemptions~~] specified in subsection (a) of this section remains [~~remain~~] in effect until a permit issued prior to September 1, 2010, is no longer valid.

§744.2907. How does Licensing determine the indoor activity space?

(a) We determine indoor activity space by:

(1) (No change.)

(2) Rounding all measurements up to the nearest inch;

(3) Excluding single-use areas, which are areas not routinely used for children's activities, such as a bathroom, hallway, storage room, cooking area of a kitchen, swimming pool, and storage building[; ~~See §744.105(42) of this title (relating to What do certain words and terms mean in this chapter?) for a definition of single-use areas~~]; and

(4) (No change.)

(b) (No change.)

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DIVISION 3 TOILETS AND SINKS

§744.3003. Where must I locate the hand-washing sinks for children's use?

Hand-washing sinks must be inside the operation. Children must be able to safely and independently access the sink. Hand-washing sinks must be equipped with soap, running water, and single-use disposable towels or hot-air hand dryers. [~~Refer to Subchapter K of this chapter (relating to Health Practices) for further information on hand washing.~~]

§744.3007. Where must the toilets be located?

Toilets must be inside the operation and include toilet paper. Children must be able to safely and independently access the toilet. Toilets must be equipped for independent use by children and allow supervision by caregivers, as needed.

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DIVISION 4 TELEPHONE

§744.3051. Must I have a telephone at my operation?

~~[(a)]~~ Yes. You must have:

(1) A telephone at your operation with a listed telephone number; or

(2) Access to a telephone located in the same building for use in an emergency and where a person is available to:

(A) Receive incoming calls to the operation;

(B) Immediately transmit messages regarding children in care to operation caregivers;

and

(C) Make outgoing calls for the operation as necessary.

~~[(b) The telephone must not be a coin-operated pay phone.]~~

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SUBCHAPTER N INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND
EQUIPMENT
DIVISION 1 MINIMUM SAFETY REQUIREMENTS

§744.3101. What minimum safety requirements must my active play equipment meet?

(a) Indoor and outdoor active play equipment used both at and away from the operation must be safe for the children as follows:

(1) (No change.)

(2) The design, scale, and location of the equipment must be used according to the manufacturer's instructions [~~appropriate for the body size and ability of the children using the equipment~~];

(3) - (10) (No change.)

(11) If you are licensed to provide only care in a public school facility operated by the local independent school district, you must inform parents in writing at the time they enroll their child if the active play equipment [~~or space~~] you plan to use at the public school facility does not meet Licensing standards specified in this subchapter. Otherwise, children must not be allowed to use equipment that does not meet Licensing standards.

(b) (No change.)

§744.3107. Are there additional equipment restrictions for children younger than five years of age?

(a) (No change.)

(b) In addition, children younger than four years of age must not be allowed to use the following pieces of equipment at or away from the operation:

(1) - (2) (No change.)

(3) Vertical slide poles; [~~or~~]

(4) Over-head swinging rings; or

(5) Parallel [~~and parallel~~] bars.

(c) (No change.)

§744.3109. What is the maximum height allowed for the highest designated play surface?

(a) The maximum height allowed for the highest designated play surface on active play equipment designed to be used by children is:

(1) The height that is consistent with the manufacturer's guidelines;

(2) The height that is consistent with ASTM International standards; or

(3) As follows:

<u>Age of child that the equipment is designed to</u>	<u>Maximum height of play surface:</u>
---	--

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<u>be used for:</u>	
<u>(A) Younger than five years old,</u>	<u>Five feet.</u>
<u>(B) Five years old and older,</u>	<u>Seven feet.</u>

(b) Equipment that is fundamental to the core development of a skill, talent, ability, expertise, or proficiency, such as parallel bars and trampolines used in gymnastics programs, may exceed the maximum height allowed if:

- (1) The equipment is installed and used according to manufacturer's instructions;
- (2) A child's use of the equipment is supervised by trained personnel;
- (3) The safety practices employed by the operation and the risks associated with the use of each type of equipment are outlined in your policies and procedures; and
- (4) Parents provide written consent before children use the equipment. Written consent must be kept on file at the operation in the child's record.

§744.3111. What is the maximum height allowed for the highest designated play surface if [~~Do the height requirements apply to~~] my operation [~~if it~~] was licensed before September 1, 2010?

(a) If you were licensed [~~after September 1, 2003, and~~] before September 1, 2010, [~~and unless you meet one of the conditions specified in subsection (b) of this section,~~] the maximum height allowed for the highest designated play surface on [~~of~~] active play equipment designed to be used by children [~~allowed~~] is:

- (1) Six feet for [~~equipment designed to be used by~~] children younger than [~~under the age of~~] five years old; or
- (2) Eight feet for [~~equipment designed to be used by~~] children [~~ages~~] five years old and older.

(b) If your [~~An operation licensed before September 1, 2010, must comply with the equipment height requirements specified in this division if the~~] operation re-designs the existing playground or adds new playground equipment, then as the changes are made you [~~The permit holder~~] must meet equipment height requirements specified in §744.3109 of this title (relating to What is the maximum height allowed for the highest designated play surface?) [~~this division as the changes are made~~]. You must submit a written plan for compliance to us upon request.

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[§744.3109. What is the maximum height of the highest designated play surface allowed?

~~(a) The maximum height of the highest designated play surface on active play equipment is based on the age of children who will be using the equipment.~~

~~(b) The maximum height allowed is:~~

~~(1) Five feet for equipment designed to be used by children younger than five years old;~~

~~or~~

~~(2) Seven feet for equipment designed to be used by children who are at least five years old.~~

~~(c) Equipment that is fundamental to the core development of a skill, talent, ability, expertise, or proficiency, such as parallel bars and trampolines used in gymnastics programs, may exceed the maximum height allowed if:~~

~~(1) The equipment is installed and used according to manufacturer's instructions;~~

~~(2) A child's use of the equipment is supervised by trained personnel;~~

~~(3) The safety practices employed by the operation and the risks associated with the use of each type of equipment are outlined in your policies and procedures; and~~

~~(4) Parents provide written consent before children use the equipment. Written consent must be kept on file at the operation in the child's record.]~~

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DIVISION 3	USE ZONES

§744.3209. How do I measure the use zone for tire swings?

- (a) (No change.)
- (b) The use zone specified in [~~is~~] subsection (a) of this section must not overlap any other use zone.
- (c) (No change.)

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DIVISION 4 SURFING

§744.3251. What type of surfacing must I have under my active play equipment?

(a) (No change.)

(b) The height of the highest designated play surface on the equipment will determine the [type and] depth of loose materials or the attenuation rating (thickness) of the unitary materials.

§744.3255. How should outdoor loose-fill surfacing materials be installed?

(a) If you use loose-fill surfacing materials in your outdoor active play space, you must install and maintain nine inches or more of uncompressed loose-fill material in the use zones. [However, if you were licensed before September 1, 2010, you only have to maintain at least six inches of loose fill surfacing materials until September 1, 2015; after which date you must maintain at least nine inches of uncompressed loose fill surfacing materials.]

(b) - (e) (No change.)

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DIVISION 6 INFLATABLES

§744.3351. May I use inflatable active play equipment?

You [~~Yes, you~~] may use inflatable equipment both at and away from your operation if you follow these guidelines [~~as long as~~]:

(1) You use enclosed [~~Enclosed~~] inflatables (such as bounce houses or moon walks) according to the manufacturer's instructions [~~are used by one child at a time~~];

(2) You use open [~~Open~~] inflatables (such as obstacle courses, slides, or games) [~~are used~~] according to the manufacturer's label and instructions for the user; and

(3) Inflatables that include water activity also comply with all applicable requirements in Subchapter O of this title (relating to Swimming Pools, [~~and~~] Wading/Splashing Pools, and Sprinkler Play).

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SUBCHAPTER O SWIMMING POOLS AND WADING/SPLASHING POOLS

~~[\§744.3409. Does having a fence relieve me of the duty to supervise children's access to the pool?~~

~~No. Although a fence and locked access provides a layer of protection for a child who strays from supervision and may deter some children from entering the pool area, these do not replace the need for constant adult supervision and monitoring of safety features to protect children from unsupervised access to the pool.]~~

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SPRINKLER PLAY

§744.3413. Are there specific safety requirements for sprinkler play?

(a) You must ensure that no child uses sprinkler equipment on or near a hard, slippery surface, such as a concrete driveway, sidewalk, or patio.

(b) You must not leave a child alone with the sprinkler equipment.

(c) You must store sprinkler equipment and water hoses out of the reach of children [~~children's reach~~] when not in use.

(d) You must maintain your splash pad/sprinkler play area according to manufacturer's instructions.

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SUBCHAPTER P	FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 1	FIRE INSPECTION

§744.3505. Must I make all corrections specified in the fire-inspection report?

Yes, [~~if required,~~] you must comply with all corrections, restrictions, or conditions specified by the inspector in the fire inspection report, letter, or checklist.

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DIVISION 2	EMERGENCY PREPAREDNESS

§744.3561. Must I have an emergency evacuation and relocation diagram?

(a) (No Change.)

(b) You must post an emergency evacuation and relocation diagram in each room the children use. You must post the diagram [~~plan~~] near the entrance and/or exit of the room and where children and employees may easily view the diagram.

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SUBCHAPTER P FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 3 FIRE EXTINGUISHERS AND SMOKE DETECTION SYSTEMS

§744.3605. Where must I mount fire extinguishers?

You must mount the fire extinguisher on the wall by a hanger or bracket. The top of the extinguisher must be no higher than five feet above the floor and the bottom at least four inches above the floor or any other surface. If the state or local fire marshal or the manufacturer's instructions has different mounting instructions, you must [~~may~~] follow those instructions. The fire extinguisher must be readily available for immediate use by employees and caregivers.

§744.3607. How often must I inspect and service the fire extinguisher(s)?

(a) The director or designee must inspect fire extinguisher(s) monthly. The date of the inspection and the name of the director or designee who inspects the extinguisher(s) [~~employee~~] must be recorded and kept at the operation for review during your hours of operation.

(b) (No change.)

§744.3619. How often must the smoke detectors at my operation be tested?

The director or designee must test all smoke detectors monthly. The date of the test and the name of the director or designee [~~employee~~] who does the testing must be documented and kept at the operation for review during your hours of operation.

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DIVISION 6	CARBON MONOXIDE DETECTION SYSTEMS

§744.3757. How often must I inspect and service the carbon monoxide detection system?

(a) If you use electric or battery-operated carbon monoxide detectors~~[, you must]~~:

(1) The director or designee must install ~~[Install]~~ a new battery in each battery-operated detector at least annually;

(2) The director or designee must test ~~[Test]~~ all detectors monthly;

(3) The ~~[Document the]~~ date of each monthly test, date of each installation of new batteries, and the name of the director or designee ~~[employee]~~ who does the ~~[each testing or]~~ installment of new batteries and each testing must be recorded and kept~~[; and]~~

~~[(4) Keep this documentation]~~ at the operation for review during your hours of operation.

(b) (No change.)

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SUBCHAPTER Q TRANSPORTATION

§744.3801. What types of transportation does Licensing regulate?

We regulate all ~~any~~ transportation provided by or for the operation to children in care, including ~~but not limited to~~, transportation between the home and the school, ~~between~~ the school and the operation, the operation and home, the operation or the school and field trip locations, or the operation or the school and other drop off locations~~[-authorized by the parent].~~

§744.3805. What safety precautions must I take when loading and unloading children from the vehicle?

You must take the following precautions when loading and unloading children from any vehicle, including any type of bus:

(1) (No change.)

(2) You must not allow a child to cross a street any time ~~[unless the child is accompanied by an adult anytime]~~ before a child enters ~~[entering]~~ or exits ~~[after leaving]~~ a vehicle, unless the child is accompanied by an adult;

(3) - (4) (No change.)

§744.3807. What child passenger safety seat ~~[restraint]~~ system must I use when I transport children?

(a) You must use a child passenger safety seat system to restrain a child when transporting the child. The restraint system must meet the federal standards for crash-tested systems as set by the National Highway Traffic Safety Administration and must be properly secured in the vehicle according to manufacturer's instructions.

~~(b) [(a)]~~ You must secure each child in a rear-facing convertible child safety seat, forward-facing child safety seat, child booster seat, safety vest, harness, or a safety belt, as appropriate to the child's age, height, and weight according to manufacturer's instructions for all vehicles specified in subsection (d) of this section, unless otherwise noted in this subchapter.

~~[(b) All child passenger safety restraint systems must meet federal standards for crash tested restraint systems as set by the National Highway Traffic Safety Administration, and must be properly secured in the vehicle according to manufacturer's instructions.]~~

(c) - (d) (No change.)

§744.3817. Must I carry specific information and equipment in vehicles used to transport children in my care?

(a) You must have the following in each vehicle you use to transport children:

(1) - (2) (No change.)

(3) The operation's name and telephone number and the~~[-]~~ director or permit holder's

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name. The information must be~~[, and operation telephone number]~~ in the glove compartment or clearly visible inside the passenger compartment, or the operation's name and telephone number must be clearly visible on the outside of the vehicle;

(4) - (5) (No change.)

(6) A first-aid kit as specified in Division 4 of Subchapter L (relating to First-Aid Kits) ~~[§744.2753 of this title (relating to What items must each first-aid kit contain?)].~~

(b) (No change.)

§744.3821. What communications device must I have in a vehicle used for transporting children?
You must have one of the following:

(1) A communications device such as a cellular phone~~[, message pager,]~~ or two-way radio; or

(2) (No change.)