Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services

Chapter 42

HUMAN RESOURCES CODE
AS AMENDED, 84th TEXAS LEGISLATURE
EFFECTIVE SEPTEMBER 1, 2015

PUBLISHED BY THE TEXAS DEPARTMENT OF
FAMILY AND PROTECTIVE SERVICES
FOR REFERENCE PURPOSES ONLY

Stock Code 20815-0000
September 2015

This is a publication of the Texas Human Resources Code, Chapter 42 and an excerpt from the Texas Family Code, Chapter 261. These are the laws that require the Texas Department of Family and Protective Services (DFPS) to regulate child-care and child-placing activities in Texas, to investigate alleged abuse and neglect in child-care facilities, and to create and enforce minimum standards.

The Texas Legislature made changes to these laws during the 2015 84th Regular Texas Legislative session. The following are highlights of these changes:

Affecting all types of operations regulated by Child Care Licensing, the 84th Legislature:

- Amended Sections 42.048(f), 42.050, and 42.052 requiring all licenses and registrations to be renewed. Rules need to be adopted regarding renewal periods, a process for staggered renewals and late applications, expiration dates, and conditions for renewal.
- Amended Section 42.054 (Fees) to delete the fee amounts in statute and require fees to be adopted by department rule.
- Created Section 42.0704 (Enforcement Policy) requiring DFPS to establish a general enforcement policy in rule. The purpose of the enforcement policy is to establish a consistent and fair application of actions Licensing may impose on an operation, and to provide transparency to the decision making process. The enforcement policy must allow DFPS to consider the circumstances in a particular case, history of violations, and aggravating and mitigating factors.
- Amended Section 42.078(a-2) (Administrative Penalty) to expand DFPS's authority to impose administrative penalties for violations of high-risk standards, such as supervision, safety hazards, and background checks. The administrative penalties may be issued without first imposing a non-monetary administrative sanction.
- Created Section 42.079 (Cease and Desist Order) to allow DFPS to issue cease and desist orders to illegal operations.

Affecting only residential (24 hour) child-care operations and/or child-placing agencies, the 84th Legislature:

- Created Section 42.0462 (Waiver of Notice and Hearing Requirements) to waive the notice and hearing requirements for an applicant for a general residential operation intending to provide trafficking victim services.
- Created Section 42.0531 (Secure Agency Foster Homes and Secure Agency Foster Group Homes) to allow a commissioner's court of a county to contract with a child-placing agency to verify foster homes that provide trafficking victim services (secure foster homes). These homes will provide a safe and therapeutic environment tailored to trafficking victims, including mental health services, individualized services based on trauma, and appropriate security.

Affecting only child day-care operations (including child care homes), the 84th Legislature:

- Created Section 42.205 (Searchable Database) requiring the List of Involuntarily Suspended or Revoked Child Care Operations database to include, if applicable, a permanent notation and the year when a listed or registered family home was previously involuntarily suspended or revoked.
- Amended Section 42.056 (Required Background and Criminal History Checks; Criminal Penalties) to require Licensed Child Care Homes (also known as Group Day Care Homes), Registered Homes, and most Listed Homes to have fingerprint-based criminal history checks for all individuals who require a background check except for frequent or regular visitors. Listed Homes that only provide child care to relatives would still only be required to obtain name-based criminal history checks unless an individual has lived out of state in the past five years or has suspected criminal history in another state. However, all Listed Homes would be required to pay background check fees.

CHAPTER 42. REGULATION OF CERTAIN FACILITIES, HOMES, AND AGENCIES THAT PROVIDE CHILD-CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS
§42.001. Purpose.
§42.002. Definitions.
§42.003. Reference to Child-Care Institution.
§42.004. Confidentiality of Investigation Information.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS
§42.021. Division Designated.
§42.0211. Safety Specialists, Risk Analysts, and Performance Management.
§42.023. Annual Report.
§42.024. Administrative Procedure.
§42.025. Searchable Database.

SUBCHAPTER C. REGULATION OF CERTAIN FACILITIES, HOMES, AND AGENCIES
§42.041. Required License.
§42.042. Rules and Standards.
§42.0421. Minimum Training Standards.
§42.0422. Restraint and Seclusion.
§42.0423. Children's Product Safety for Certain Nonresidential Child-Care Facilities.
§42.0424. Child Safety Alarms in Vehicles.
§42.0425. Assessment Services.
§42.0426. Training of Personnel.
§42.04261. Other Training of Personnel: Child-Placing Agencies and Day-Care Centers.
§42.0427. Parental Visitation.
§42.0428. Policies Addressing Sexual Abuse and Other Maltreatment of Children.
§42.043. Rules for Immunizations.
§42.04305. Vaccine-Preventable Disease Policy Required.
§42.0431. Enforcement of Screening Requirements Relating to Vision, Hearing, and Other Special Senses and Communication Disorders.
§42.044. Inspections.
§42.0441. Inspection Results for Certain Nonresidential Child-Care Facilities.
§42.04411. Inspection Results and Exit Conference for Residential Child-Care Facilities.
§42.04412. Interference With Inspection; Court Order.
§42.0442. Coordination of inspections; Elimination of Duplicative Inspections.
§42.04425. Inspection Information Database.
§42.0443. Coordination of Fire Safety and Sanitation Inspections.
§42.04431. Enforcement of State Law by County or Municipality.
§42.0445. Required Background Search of Central Registry of Reported Cases of Child Abuse or Neglect.
§42.0446. Removal of Certain Investigation Information From Internet Website.
§42.0447. False Report; Criminal Penalty.
§42.0448. Notification of Family Violence Calls.
§42.0449. Required Actions After Notice of Family Violence Call.
§42.045. Records.
§42.0451. Database of Foster Homes; Information Provided to Department of Public Safety.
§42.0452. Foster Parent Rights and Responsibilities Statement.
§42.046. Application for License, Listing, or Registration.
§42.0461. Public Notice and Hearing in Certain Counties: Residential Child Care.
§42.0462. Waiver of Notice and Hearing Requirements.
§42.047. Consultations.
§42.048. Licensing.
§42.049. Liability Insurance Required.
§42.050. License Renewal.
§42.051. Initial License.
§42.052. Certification, Listing, and Registration.
§42.0521. Deposit of Fees.
§42.0522. Public Advertising of Family Homes.
§42.0523. Listing of Relative Child-Care Providers.
§42.053. Agency Foster Homes and Agency Foster Group Homes.
§42.0531. Secure Agency Foster Homes and Secure Agency Foster Group Homes.
§42.0535. Required Information for Verification.
§42.0536. Transfer of Agency Foster Home.
§42.054. Fees.
§42.055. Sign Posting.
§42.0551. Posting of Employee List.
§42.056. Required Background and Criminal History Checks; Criminal Penalties.
§42.0561. Information Relating to Family Violence Reports.
§42.057. Drug Testing.
§42.058. Competitive Bidding or Advertising Rules.
§42.059. Required Affidavit for Applicants for Employment With Facility or Registered Family Home.
§42.060. Carbon Monoxide Detectors.
§42.062. Certain Employment and Service Prohibited.
§42.063. Reporting of Incidents and Violations.
§42.064. Information Regarding Gang-Free Zones.
§42.065. Administering Medication.

SUBCHAPTER D. REMEDIES
§42.0704. Enforcement Policy.
§42.0705. Range of Penalties.
§42.071. Suspension, Evaluation, or Probation of License or Registration.
§42.0715. Costs Charged to Facility or Family Home.
§42.072. License, Listing, or Registration Denial, Suspension, or Revocation.
§42.073. Emergency Suspension and Closure of a Facility or Family Home.
§42.074. Injunctive Relief.
§42.075. Civil Penalty.
§42.076. Criminal Penalties.
§42.0761. Criminal Penalty for Operating Day-Care Center Without Qualified Director.
§42.077. Notice of Action Against Facility or Family Home.
§42.078. Administrative Penalty.
§42.079. Cease and Desist Order.

SUBCHAPTER F. REGULATION OF EMPLOYER-BASED DAY-CARE FACILITIES
§42.151. Definitions.
§42.152. Permit Required.
§42.153. Application; Initial Inspection and Background and Criminal History Checks.
§42.154. Conversion of License.
§42.155. Parent or Guardian Within Immediate Vicinity.
§42.156. Caregiver-To-Child Ratio.
§42.157. Minimum Standards.
§42.158. Caregiver Qualifications.
§42.159. Background and Criminal History Checks Required.
§42.160. Applicability of Other Law.
§42.161. Reporting of Incidents and Violations.
§42.162. Authority to Conduct Limited Inspections.
§42.163. Suspension, Denial, or Revocation.

SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES
§42.201. Definitions.
§42.202. Permit Required.
§42.203. Application; Initial Inspection and Background and Criminal History Checks.
§42.204. Conversion of License.
§42.205. Caregiver Qualifications and Training; Child-To-Caregiver Ratios.
§42.206. Background and Criminal History Checks Required.
§42.207. Applicability of Other Law.
§42.208. Reporting of Incidents and Violations.
§42.209. Authority to Conduct Limited Inspections.
§42.210. Suspension, Denial, or Revocation.

TEXAS FAMILY CODE, Excerpts
§261.401. DEFINITIONS. (Definitions of "Abuse" and "Neglect")

SUBCHAPTER A. GENERAL PROVISIONS

§42.001. Purpose.

The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate. With respect to a school or child-care facility sponsored by a religious organization, nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the:

(1) form, manner, or content of religious instruction, ministry, teaching, or the curriculum offered by the school or facility;

(2) ability of the school or facility to select and supervise qualified personnel, and otherwise control the terms of employment, including the right to employ individuals who share the religious views of the school or facility;

(3) internal self-governance and autonomy of the school or facility; or

(4) religious environment of the school or facility, such as symbols, art, icons, and scripture.

§42.002. Definitions.

In this chapter:

(1) "Child" means a person under 18 years of age.

(2) "Division" means the division designated by the department to carry out the provisions of this chapter.

(3) "Child-care facility" means a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(4) "General residential operation" means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

(5) "Foster group home" means a child-care facility that provides care for 7 to 12 children for 24 hours a day.

(6) "Foster home" means a child-care facility that provides care for not more than six children for 24 hours a day.

(7) "Day-care center" means a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

(8) "Group day-care home" means a child-care facility that provides care at the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

(9) "Family home" means a home that provides regular care in the caretaker's own residence for not more than six children under 14 years of age, excluding children who are related to the caretaker, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including children who are related to the caretaker, does not exceed 12 at any given time. The term does not include a home that provides care exclusively for any number of children who are related to the caretaker.

(10) "Agency foster group home" means a facility that provides care for seven to 12 children for 24 hours a day, is used only by a licensed child-placing agency, and meets department standards.

(11) "Agency foster home" means a facility that provides care for not more than six children for 24 hours a day, is used only by a licensed child-placing agency, and meets department standards.

(12) "Child-placing agency" means a person, including an organization, other than the natural parents or guardian of a child who plans for the placement of or places a child in a child-care facility, agency foster home, agency foster group home, or adoptive home.

(13) "Facilities" includes child-care facilities and child-placing agencies.

(14) "State of Texas" or "state" does not include political subdivisions of the state.

(15) "Religious organization" means a church, synagogue, or other religious institution whose purpose is to support and serve the propagation of truly held religious beliefs.

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

(17) "Regular care" means care that is provided at least:

(A) four hours a day, three or more days a week, for three or more consecutive weeks; or

(B) four hours a day for 40 or more days in a period of 12 months.

(18) "Controlling person" means a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies of a facility or family home.

(19) "Residential child-care facility" means a facility licensed or certified by the department that operates for all of the 24-hour day. The term includes general residential operations, child-placing agencies, foster group homes, foster homes, agency foster group homes, and agency foster homes.

(20) "Before-school or after-school program" means a child-care facility that provides care before or after, or before and after, the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend prekindergarten through grade six.

(21) "School-age program" means a child-care facility that provides supervision, along with recreation or skills instruction or training, and may provide transportation, before or after the customary school day, for at least two hours a day, three days a week, to children attending prekindergarten through grade six. A school-age program may also operate during school holidays, the summer period, or any other time when school is not in session.

(22) "Children's product" means a product that is designed or intended to be used by a child under 13 years of age or used by a caregiver during the care of a child under 13 years of age. The term does not include:

(A) an item that is not designed or intended to be used solely or primarily by a child under 13 years of age or in the care of a child under 13 years of age;

(B) a medication, a drug, food, or another item that is intended to be ingested; or

(C) clothing.

(23) "Other maltreatment" means:

(A) abuse, as defined by Section 261.001 or 261.401, Family Code; or

(B) neglect, as defined by Section 261.001 or 261.401, Family Code.

§42.003. Reference to Child-Care Institution.

A reference in law to a "child-care institution" means a general residential operation.

§42.004. Confidentiality of Investigation Information.

A photograph, videotape, audiotape, or other audio or visual recording, depiction, or documentation of a child that is made by the department in the course of an inspection or investigation authorized by this chapter or Section 261.401, Family Code, is confidential, is not subject to release under Chapter 552, Government Code, and may be released only as required by state or federal law or rules adopted by the executive commissioner.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§42.021. Division Designated.

(a) The department may designate a division within the department to carry out responsibilities the department may delegate or assign under this chapter. The department shall ensure the independence of the division from the child protective services division.

(b) The commissioner shall appoint as director of a division designated under Subsection (a) a person who meets the qualifications set by the executive commissioner. The commissioner shall ensure the director's independence from the child protective services division and may not terminate the director without the approval of the executive commissioner.

(c) The department shall employ sufficient personnel and provide training for the personnel to carry out the provisions of this chapter.

(d) The commissioner may divide the state into regions for the purpose of administering this chapter.

§42.0211. Safety Specialists, Risk Analysts, and Performance Management.

(a) The division shall employ at least one specially trained investigation safety specialist, whose duties include the duty to:

(1) review and evaluate the intake of reports that include allegations associated with a higher risk of harm to the child; and

(2) consult with the assigned investigator to provide specialized guidance and resources to assist the investigation.

(b) The division shall employ at least one risk analyst, whose duties include the duty to:

(1) identify facilities, including child-placing agencies, whose compliance histories indicate the potential for a higher risk of harm to children in the care of the facility;

(2) review the monitoring and inspection reports for any facilities described by Subdivision (1) to assess the quality of the investigation or monitoring; and

(3) identify any additional monitoring or enforcement action that may be appropriate to ensure the safety of a child in the care of the facility.

(c) The division must include a performance management unit with duties that include:

(1) conducting quality assurance reviews of randomly selected monitoring and investigative reports to ensure compliance with all relevant laws, rules, and agency policies; and

(2) making recommendations to improve the quality and consistency of monitoring and investigations.

§42.023. Annual Report.

(a) The department shall prepare an annual written report regarding the department's activities under this chapter.

(b) The annual report shall include:

(1) a report by regions of applications for licensure or certification, of initial licenses issued, denied, or revoked, of licenses issued, denied, suspended or revoked, of emergency closures and injunctions, and of the compliance of state-operated agencies, if such agencies exist, with certification requirements;

(2) a summary of the training programs required by the department and their effectiveness;

(3) a summary of training and other professional development opportunities offered to facilities' staffs;

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year; and

(5) a report of trends in licensing violations on a statewide and regional basis and the department's plans to address those trends through the provision of technical assistance.

(c) Copies of the annual report shall be available to any state citizen on request.

§42.024. Administrative Procedure.

Chapter 2001, Government Code applies to all procedures under this chapter except where it is contrary to or inconsistent with the provisions of this chapter.

§42.025. Searchable Database.

(a) The department shall maintain on the department's Internet website a searchable database that includes the name, the address, and any identification number, as applicable, of each family home registered or listed under this chapter that previously had a registration or listing involuntarily suspended or revoked under this chapter with a permanent notation indicating the involuntary suspension or revocation and the year in which the suspension or revocation took effect or was final under this chapter.

(b) The executive commissioner may adopt rules as necessary to implement this section.

SUBCHAPTER C. REGULATION OF CERTAIN FACILITIES, HOMES, AND AGENCIES

§42.041. Required License.

(a) No person may operate a child-care facility or child-placing agency without a license issued by the department.

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency foster home or agency foster group home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities, including retreats or classes for religious instruction, on or near the premises, that does not advertise as a child-care facility or day-care center, and that informs parents that it is not licensed by the state;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Department of State Health Services;

(6) a facility licensed, operated, certified, or registered by another state agency;

(7) an educational facility that is accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or an accreditation body that is a member of the Texas Private School Accreditation Commission and that operates primarily for educational purposes for prekindergarten and above, a before-school or after-school program operated directly by an accredited educational facility, or a before-school or after-school program operated by another entity under contract with the educational facility, if the Texas Education Agency, the Southern Association of Colleges and Schools, or the other accreditation body, as applicable, has approved the curriculum content of the before-school or after-school program operated under the contract;

(8) an educational facility that operates solely for educational purposes for prekindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or

after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;

(10) a family home, whether registered or listed;

(11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers an educational program in one or more of the following: prekindergarten through at least grade three, elementary grades, or secondary grades;

(12) an emergency shelter facility, other than a facility that would otherwise require a license as a child-care facility under this section, that provides shelter or care to a minor and the minor's child or children, if any, under Section 32.201, Family Code, if the facility:

(A) is currently under a contract with a state or federal agency; or

(B) meets the requirements listed under Section 51.005(b)(3);

(13) a juvenile detention facility certified under Section 51.12, Family Code, a juvenile correctional facility certified under Section 51.125, Family Code, a juvenile facility providing services solely for the Texas Juvenile Justice Department, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;

(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless;

(16) a food distribution program that:

(A) serves an evening meal to children two years of age or older; and

(B) is operated by a nonprofit food bank in a nonprofit, religious, or educational facility for not more than two hours a day on regular business days;

(17) a child-care facility that operates for less than three consecutive weeks and less than 40 days in a period of 12 months;

(18) a program:

(A) in which a child receives direct instruction in a single skill, talent, ability, expertise, or proficiency;

(B) that does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;

(C) that does not advertise or otherwise represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) that informs the parent or guardian:

(i) that the program is not licensed by the state; and

(ii) about the physical risks a child may face while participating in the program; and

(E) that conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(19) an elementary-age (ages 5-13) recreation program that:

(A) adopts standards of care, including standards relating to staff ratios, staff training, health, and safety;

(B) provides a mechanism for monitoring and enforcing the standards and receiving complaints from parents of enrolled children;

(C) does not advertise as or otherwise represent the program as a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) informs parents that the program is not licensed by the state;

(E) is organized as a nonprofit organization or is located on the premises of a participant's residence;

(F) does not accept any remuneration other than a nominal annual membership fee;

(G) does not solicit donations as compensation or payment for any good or service provided as part of the program; and

(H) conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(20) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the caretaker:

(A) had a prior relationship with the child or sibling group or other family members of the child or sibling group;

(B) does not care for more than one unrelated child or sibling group;

(C) does not receive compensation or solicit donations for the care of the child or sibling group; and

(D) has a written agreement with the parent to care for the child or sibling group;

(21) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which:

(A) the department is the managing conservator of the child or sibling group;

(B) the department placed the child or sibling group in the caretaker's home; and

(C) the caretaker had a long-standing and significant relationship with the child or sibling group before the child or sibling group was placed with the caretaker;

(22) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the child is in the United States on a time-limited visa under the sponsorship of the caretaker or of a sponsoring organization or

(23) a facility operated by a nonprofit organization that:

(A) does not otherwise operate as a child-care facility that is required to be licensed under this section;

(B) provides emergency shelter and care for not more than 15 days to children 13 years of age or older but younger than 18 years of age who are victims of human trafficking alleged under Section 20A.02, Penal Code;

(C) is located in a municipality with a population of at least 600,000 that is in a county on an international border; and

(D) meets one of the following criteria:

(i) is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or

(ii) meets the eligibility requirements for a contract under Section 51.005(b)(3).

(c) A single license that lists addresses and the appropriate facilities may be issued to a general residential operation that operates noncontiguous facilities that are across the street from, in the same city block as, or on the same property as one another and that are demonstrably a single operation as indicated by patterns of staffing, finance, administrative supervision, and programs.

(d) A facility exempt from the provisions of Subsection (a) that desires to receive or participate in federal or state funding shall be

required to comply with all other provisions of this chapter and with all regulations promulgated under this chapter.

(e) The exemptions provided by Subsection (b) do not affect the authority of local, regional, or state health department officials, the state fire marshal, or local fire prevention officials to inspect child-care facilities.

(f) Notwithstanding the requirements of Subsection (b)(14), a municipality that operates an elementary-age (ages 5-13) recreation program may, in lieu of an annual public hearing, accept public comment through the municipality's Internet website for at least 30 days before the municipality adopts standards of care by ordinance if the municipality:

(1) has a population of 300,000 or more; and

(2) has held at least two annual public hearings on the standards of care and adopted standards of care by ordinance after those public hearings.

(g) A child-care facility that is exempt under Subsection (b)(3) from the licensing requirement of Subsection (a) may provide care for each child at the child-care facility for not more than 15 hours a week if the child-care facility:

(1) provides the child care so that a person may attend an educational class provided by a nonprofit entity; and

(2) is located in a county with a population of 800,000 or more that is adjacent to an international border.

§42.042. Rules and Standards.

(a) The executive commissioner shall adopt rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of all rules and standards at least every six years. For purposes of this subsection, the six-year period begins on the latest of the date of:

(1) the conclusion of the review of the rules and standards;

(2) a decision by the department not to revise the rules and standards;

(3) a decision by the executive commissioner not to revise the rules and standards; or

(4) executive commissioner action adopting new standards.

(c) The department shall provide a standard procedure for receiving and recording complaints. The executive commissioner shall adopt rules regarding the receipt of anonymous complaints made regarding child-care facilities and family homes to limit the number of anonymous complaints investigated by the department.

(d) The department shall provide standard forms for applications and inspection reports.

(e) The executive commissioner shall promulgate minimum standards that apply to licensed child-care facilities and to registered family homes covered by this chapter and that will:

(1) promote the health, safety, and welfare of children attending a facility or registered family home;

(2) promote safe, comfortable, and healthy physical facilities and registered family homes for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities and registered family homes;

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs;

(7) prevent the breakdown of foster care and adoptive placement; and

(8) ensure that a child-care facility or registered family home:

(A) follows the directions of a child's physician or other health care provider in providing specialized medical assistance required by the child; and

(B) maintains for a reasonable time a copy of any directions from the physician or provider that the parent provides to the facility or home.

(e-1) The department may not prohibit possession of lawfully permitted firearms and ammunition in a foster home of any type, including a foster group home, a foster home, an agency foster group home, and an agency foster home. Minimum standards may be adopted under this section relating to safety and proper storage of firearms and ammunition, including standards requiring firearms and ammunition to be stored separately in locked locations.

(e-2) The department may not prohibit the foster parent of a child who resides in the foster family's home from transporting the child in a vehicle where a handgun is present if the handgun is in the possession and control of the foster parent and the foster parent is licensed to carry the handgun under Subchapter H, Chapter 411, Government Code.

(f) In promulgating minimum standards for the provision of child-care services, the executive commissioner shall recognize the various categories of services, including services for specialized care, the various categories of children and their particular needs, and the differences in the organization and operation of child-care facilities and general residential operations. Standards for general residential operations must require an intake study before a child is placed in an operation. The intake study may be conducted at a community mental health and intellectual disability center.

(g) In promulgating minimum standards the executive commissioner may recognize and treat differently the types of services provided by the following:

(1) registered family homes;

(2) child-care facilities, including general residential operations, foster group homes, foster homes, group day-care homes, and day-care centers;

(3) child-placing agencies;

(4) agency foster homes;

(5) agency foster group homes;

(6) before-school or after-school programs; and

(7) school-age programs.

(g-1) The executive commissioner in adopting and the department in enforcing minimum standards for a school-age program shall consider commonly accepted training methods for the development of a skill, talent, ability, expertise, or proficiency that are implemented with the consent of the parent or guardian of the participant and that are fundamental to the core purpose of the program.

(g-2) The executive commissioner by rule shall adopt minimum standards that apply to general residential operations that provide comprehensive residential and nonresidential services to persons who are victims of trafficking under Section 20A.02, Penal Code. In adopting the minimum standards under this subsection, the executive commissioner shall consider:

(1) the special circumstances and needs of victims of trafficking of persons; and

(2) the role of the general residential operations in assisting and supporting victims of trafficking of persons.

(h) The executive commissioner shall promulgate minimum standards for child-placing agencies.

(h-1) The executive commissioner shall adopt rules governing:

(1) the placement and care of children by a child-placing agency, as necessary to ensure the health and safety of those children;

(2) the verification and monitoring of agency foster homes, agency foster group homes, and adoptive homes by a child-placing agency; and

(3) if appropriate, child-placing agency staffing levels, office locations, and administration.

(i) Before the executive commissioner adopts minimum standards, the department shall:

(1) convene a temporary work group to advise the executive commissioner regarding the proposed standards, composed of at least six members who represent the diverse geographic regions of this state, including:

(A) a department official designated by the commissioner to facilitate the work group's activities;

(B) a person with demonstrated expertise or knowledge regarding the different types and classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards;

(C) a parent with experience related to one of the different types or classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards; and

(D) a representative of a nonprofit entity licensed under this chapter; and

(2) send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the department.

(j) The department may waive compliance with a minimum standard in a specific instance if it determines that the economic impact of compliance is sufficiently great to make compliance impractical.

(k) The department may not regulate or attempt to regulate or control the content or method of any instruction or curriculum of a school sponsored by a religious organization.

(l) In promulgating minimum standards for the regulation of family homes that register with the department, the executive commissioner must address the minimum qualifications, education, and training required of a person who operates a family home registered with the department.

(m) In determining minimum standards relating to staff-to-child ratios, group sizes, or square footage requirements applicable to nonresidential child-care facilities that provide care for less than 24 hours a day, the department shall, within available appropriations, conduct a comprehensive cost-benefit analysis and economic impact study that includes families and licensed child-care providers.

(n) Not later than the 60th day before the date the executive commissioner adopts a revision to the minimum standards for child-care facilities, the executive commissioner shall present the revision to the appropriate legislative oversight committees that have jurisdiction over child-care facilities for review and comment.

(p) The executive commissioner by rule shall prescribe minimum training standards for an employee of a regulated child-care facility, including the time required for completing the training. The executive commissioner may not require an employee to repeat required training if the employee has completed the training within the time prescribed by department rule. The department's local offices shall make available at the local office locations a copy of the rules regarding minimum training standards, information enabling the owner or operator of a regulated facility to apply for training funds from other agencies to lower facility costs, and any other materials the department may develop to assist the owner or operator or other entity in providing the training.

(q) Each residential child-care facility shall notify the department and the appropriate local law enforcement agency immediately on determining that a child is missing from the facility.

(r) A residential child-care facility that provides emergency services may temporarily exceed the facility's capacity for not more than 48 hours to provide temporary care for a child in an emergency. The facility shall notify the department within 24 hours of the placement that the facility temporarily exceeded the facility's capacity.

§42.0421. Minimum Training Standards.

(a) The minimum training standards prescribed by the executive commissioner under Section 42.042(p) for an employee, director, or operator of a day-care center, group day-care home, or registered family home must include:

(1) 24 hours of initial training that must be completed not later than the 90th day after the employee's first day of employment for an employee of a day-care center who has no previous training or less than two years of employment experience in a regulated child-care facility, eight hours of which must be completed before the employee is given responsibility for a group of children;

(2) 24 hours of annual training for each employee of a day-care center or group day-care home, excluding the director, which must include at least six hours of training in one or more of the following areas:

(A) child growth and development;

(B) guidance and discipline;

(C) age-appropriate curriculum; and

(D) teacher-child interaction; and

(3) 30 hours of annual training for each director of a day-care center or group day-care home, or operator of a registered family home which must include at least six hours of training in one or more of the following areas:

(A) child growth and development;

(B) guidance and discipline;

(C) age-appropriate curriculum; and

(D) teacher-child interaction.

(b) The minimum training standards prescribed by the executive commissioner under Section 42.042(p) must require an employee of a licensed day-care center or group day-care home who provides care for children younger than 24 months of age to receive special training regarding the care of those children. The special training must be included as a component of the initial training required by Subsection (a)(1) and as a one-hour component of the annual training required by Subsections (a)(2) and (a)(3). The special training must include information on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(c) The executive commissioner by rule shall require an operator of a registered family home who provides care for a child younger than 24 months of age to complete one hour of annual training on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(d) Section 42.042(m) does not apply to the minimum training standards required by this section.

(e) In addition to other training required by this section, the executive commissioner by rule shall require an owner, operator, or employee of a day-care center, group day-care home, registered family home, general residential operation, foster group home, or agency foster group home who transports a child under the care of the facility whose chronological or developmental age is younger than nine years of age to complete at least two hours of annual training on transportation safety.

(f) The training required by this section must be appropriately targeted and relevant to the age of the children who will receive care from the individual receiving training and must be provided by a person who:

(1) is a training provider registered with the Texas Early Childhood Professional Development System's Texas Trainer Registry that is maintained by the Texas Head Start State Collaboration Office;

(2) is an instructor at a public or private secondary school, an institution of higher education, as defined by Section 61.003, Education Code, or a private college or university accredited by a recognized accrediting agency who teaches early childhood development or another relevant course, as determined by rules adopted by the commissioner of education and the commissioner of higher education;

(3) is an employee of a state agency with relevant expertise;

(4) is a physician, psychologist, licensed professional counselor, social worker, or registered nurse;

(5) holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide;

(6) is a registered family home care provider or director of a day-care center or group day-care home in good standing with the department, if applicable, and who:

(A) has demonstrated core knowledge in child development and caregiving; and

(B) is only providing training at the home or center in which the provider or director and the person receiving training are employed; or

(7) 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 been awarded a Child Development Associate (CDA) credential; or

(B) holds at least an associate's degree in child development, early childhood education, or a related field.

(g) A person described by Subsection (f)(6) may provide training under this section only if the department has not taken an action under Section 42.071, 42.072, or 42.078, other than an evaluation, against the license, listing, or registration of the person or the home or center for which the person is a provider or director during the two-year period preceding the date on which the person provides the training.

(h) In adopting the minimum training standards under Section 42.042(p), the executive commissioner may not require more training hours than the number of hours prescribed by Subsection (a) for a day-care center, group day-care home, or a registered family home.

(i) The executive commissioner by rule shall adopt minimum training standards for before-school or after-school and school-age programs as required by Section 42.042(p). In adopting minimum training standards for before-school or after-school and school-age programs under this subsection, the executive commissioner may not require more initial or annual training hours than the number of hours required by Subsection (a) immediately before September 1, 2011.

§42.0422. Restraint and Seclusion.

A person providing services to a resident of a general residential operation, including a state-operated facility that is a residential treatment center or a general residential operation serving children with intellectual disabilities, shall comply with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

§42.0423. Children's Product Safety for Certain Nonresidential Child-Care Facilities.

(a) This section applies only to a licensed day-care center, licensed group day-care home, or registered family home.

(b) A children's product is presumed to be unsafe for purposes of this section if it has been recalled for any reason by the United States Consumer Product Safety Commission and the recall has not been rescinded.

(c) A children's product that has been recalled for any reason by the United States Consumer Product Safety Commission is not presumed to be unsafe if the product has been remanufactured or retrofitted so that the product is safe.

(d) The department shall include on its public Internet website a link to the United States Consumer Product Safety Commission's Internet website.

(e) A child-care facility subject to this section may not use an unsafe children's product or have an unsafe children's product on the premises of the child-care facility unless:

(1) the product is an antique or collectible children's product and is not used by, or accessible to, any child in the child-care facility; or

(2) the unsafe children's product is being retrofitted to make it safe and the product is not used by, or accessible to, any child in the child-care facility.

(f) The department shall notify a child-care facility subject to this section of the provisions of this section in plain, nontechnical language that will enable the child-care facility to effectively inspect the children's products at the facility and identify unsafe children's products. The department shall provide the notice required by this subsection:

(1) during the department's pre-application interview for a license, registration, or certification; and

(2) during an inspection.

(g) At least annually, each child-care facility subject to this section shall certify in writing that the facility has reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe products in the facility except products described by Subsection (e). The facility shall retain the certification form completed by each facility in the facility's licensing file.

(h) The executive commissioner shall adopt rules and forms necessary to implement this section.

§42.0424. Child Safety Alarms in Vehicles.

(a) In this section, "electronic child safety alarm" means an alarm system that prompts the driver of a vehicle to inspect the vehicle to determine whether children are in the vehicle before the driver exits the vehicle.

(b) A licensed day-care center shall equip each vehicle owned or leased by the facility with an electronic child safety alarm if the vehicle is:

(1) designed to seat eight or more persons; and

(2) used to transport children under the care of the facility.

(c) The licensed day-care center shall ensure that the electronic child safety alarm is properly maintained and used when transporting children.

(d) The executive commissioner shall adopt rules to implement this section.

(e) This section applies only to a vehicle purchased or leased on or after December 31, 2013.

§42.0425. Assessment Services.

(a) The executive commissioner by rule shall regulate assessment services provided by child-care facilities or child-placing agencies. A child-care facility or child-placing agency may not provide assessment services unless specifically authorized by the department.

(b) The executive commissioner by rule shall establish minimum standards for assessment services. The standards must provide that consideration is given to the individual needs of a child, the appropriate place for provision of services, and the factors listed in Section 42.042(e).

(c) In this section, "assessment services" means the determination of the placement needs of a child who requires substitute care.

§42.0426. Training of Personnel.

(a) A licensed facility shall provide training for staff members in:

(1) the recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure of reporting suspected occurrences of child abuse, neglect, and sexual molestation to the department or other appropriate entity;

(2) the application of first aid; and

(3) the prevention and spread of communicable diseases.

(a-1) A licensed facility shall require each employee of the facility who attends a training program required by Subsection (a)(1) to sign a statement verifying the employee's attendance at the training program. The licensed facility shall maintain the statement in the employee's personnel records.

(b) A residential child-care facility shall implement a behavior intervention program approved by the department for the benefit of a child served by the facility who needs assistance in managing the child's conduct. The program must include:

(1) behavior intervention instruction for staff members who work directly with children served by the facility; and

(2) training for all employees regarding the risks associated with the use of prone restraints.

(c) Not later than the seventh day after the date an employee begins employment at a day-care center, group day-care home, or registered family home, the employee must complete an orientation to the facility.

§42.04261. Other Training of Personnel: Child-Placing Agencies and Day-Care Centers.

(a) Notwithstanding Section 42.0426(a)(1), a child-placing agency or day-care center shall provide training for staff members in prevention techniques for and the recognition of symptoms of sexual abuse and other maltreatment of children and the responsibility and procedure of reporting suspected occurrences of sexual abuse and other maltreatment of children to the department or other appropriate entity.

(b) The type of training required under Subsection (a) shall be determined by department rule. The training must be provided for at least an hour annually and must include training concerning:

(1) factors indicating a child is at risk for sexual abuse or other maltreatment;

(2) likely warning signs indicating a child may be a victim of sexual abuse or other maltreatment;

(3) internal procedures for reporting sexual abuse or other maltreatment; and

(4) community organizations that have existing training programs that are able to provide training or other education for child-placing agency or day-care center staff members, children, and parents.

(c) If a child-placing agency or day-care center determines that it does not have sufficient resources to provide the training required under this section, the agency or center may contact a department licensing employee to obtain information concerning community organizations that will provide such training at no cost to the agency or center.

§42.0427. Parental Visitation.

All areas of a licensed facility must be accessible to a parent of a child who is receiving care at the facility if the parent visits the child during the facility's hours of operation.

§42.0428. Policies Addressing Sexual Abuse and Other Maltreatment of Children.

(a) Each child-placing agency or day-care center shall adopt and implement a policy addressing sexual abuse and other maltreatment of children.

(b) A policy required by this section must address:

(1) methods for increasing child-placing agency and day-care center staff and parent awareness of issues regarding and prevention techniques for sexual abuse and other maltreatment of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse or other maltreatment; and

(2) actions that, after contacting an agency or center, the parent of a child who is a victim of sexual abuse or other maltreatment should take to obtain assistance and intervention.

(c) The methods under Subsection (b)(1) for increasing awareness of issues regarding and prevention techniques for sexual abuse and other maltreatment of children must include:

(1) the training required under Section 42.04261; and

(2) strategies for coordination between the child-placing agency or day-care center and appropriate community organizations.

§42.043. Rules for Immunizations.

(a) The executive commissioner shall adopt rules for the immunization of children in facilities regulated under this chapter.

(b) The department shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, mumps, rubella, rubeola, invasive pneumococcal disease, and hepatitis A and against any other communicable disease as recommended by the Department of State Health Services. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

(c) The executive commissioner shall adopt rules for the provisional admission of children to facilities regulated under this chapter and may modify or delete any of the immunizations listed in Subsection (b) or require additional immunizations as a requirement for admission to a facility.

(d) No immunization may be required for admission to a facility regulated under this chapter if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization poses a significant risk to the health and well-being of the child or a member of the child's family or household; or

(2) an affidavit signed by the child's parent or guardian stating that the applicant declines immunization for reasons of conscience, including a religious belief.

(d-1) An affidavit submitted under Section (d)(2) must be on a form described by Section 161.0041, Health and Safety Code, and must be submitted not later than the 90th day after the date the affidavit is notarized.

(e) Each regulated facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the department at all reasonable times.

(f) The Department of State Health Services shall provide the immunizations required by this section to children in areas where there is no local provision of these services.

§42.04305. Vaccine-Preventable Disease Policy Required.

(a) In this section:

(1) "Facility employee" means an employee of a child-care facility.

(2) "Vaccine-preventable diseases" means the diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(b) Each child-care facility, other than a facility that provides care in the home of the director, owner, operator, or caretaker of the facility, shall develop and implement a policy to protect the children in its care from vaccine-preventable diseases.

(c) The policy must:

(1) require each facility employee to receive vaccines for the vaccine-preventable diseases specified by the child-care facility based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(2) specify the vaccines a facility employee is required to receive based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(3) include procedures for verifying whether a facility employee has complied with the policy;

(4) include procedures for a facility employee to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a facility employee who is exempt from the required vaccines, include procedures the employee must follow to protect children in the facility's care from exposure to disease, such as the use of protective medical equipment, including gloves and masks, based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(6) prohibit discrimination or retaliatory action against a facility employee who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the child-care facility to maintain a written or electronic record of each facility employee's compliance with or exemption from the policy; and

(8) state the disciplinary actions the child-care facility is authorized to take against a facility employee who fails to comply with the policy.

(d) The policy shall include procedures for a facility employee to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

(e) The executive commissioner shall adopt rules necessary to implement this section.

§42.0431. Enforcement of Screening Requirements Relating to Vision, Hearing, and Other Special Senses and Communication Disorders.

(a) The executive commissioner, after consultation with the Department of State Health Services, shall adopt rules necessary to ensure that children receiving care at a day-care center or group day-care home licensed under this chapter are screened for vision, hearing, and any other special senses or communication disorders in compliance with rules adopted under Section 36.004, Health and Safety Code.

(b) Each day-care center or group day-care home licensed under this chapter shall maintain individual screening records for children attending the facility who are required to be screened, and the department may inspect those records at any reasonable time. The department shall coordinate the monitoring inspections in compliance with protocol agreements adopted between the department and the Department of State Health Services pursuant to Section 42.0442.

§42.044. Inspections.

(a) An authorized representative of the department may visit a facility regulated under this chapter or a registered family home during operating hours to investigate, inspect, and evaluate.

(b) Except as provided by Subsection (b-3), the department shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(b-1) At least one of the unannounced, annual inspections of a residential child-care facility must be conducted by a team of at least two residential child-care monitoring staff, and, if feasible, members of the inspection team must be from different residential child-care monitoring units.

(b-2) Except as otherwise provided by this subsection, during an unannounced annual or biennial inspection of a day-care center, the department shall meet with the director designated by the day-care center as having daily, on-site responsibility for the operation of the day-care center to assess whether the director meets the qualifications of a director specified by this chapter and department rules. If the director is not present during the unannounced annual or biennial inspection, the department shall schedule a subsequent meeting with the director for that purpose and shall conduct that meeting at the day-care center.

(b-3) The department may, in accordance with rules adopted by the executive commissioner, designate a licensed day-care center or group day-care home for a biennial inspection if the department determines, based on previous inspections, that the facility has a history of substantial compliance with minimum licensing standards. The biennial inspection of a day-care center or group day-care home must be unannounced.

(c) The department must investigate a facility regulated under this chapter or a registered family home when a complaint is received. The representative of the department must notify the operator of a registered family home or the director or authorized representative of a regulated facility when a complaint is being investigated and report in writing the results of the investigation to the family home's operator or to the regulated facility's director or the director's authorized representative.

(c-1) The department:

(1) shall investigate a listed family home if the department receives a complaint that:

(A) a child in the home has been abused or neglected, as defined by Section 261.401, Family Code; or

(B) otherwise alleges an immediate risk of danger to the health or safety of a child being cared for in the home; and

(2) may investigate a listed family home to ensure that the home is providing care for compensation to not more than three children, excluding children who are related to the caretaker.

(c-2) The department must notify the operator of a listed family home when a complaint is being investigated under this section and report in writing the results of the investigation to the family home's operator.

(d) The department may call on political subdivisions and governmental agencies for assistance within their authorized fields.

(e) In addition to the department's responsibility to investigate an agency foster home or agency foster group home under Subsection (c), the department shall:

(1) periodically conduct inspections of a random sample of agency foster homes and agency foster group homes;

(2) investigate any report of a serious incident in an agency foster home or agency foster group home that pertains to a child under the age of six;

(3) investigate any alleged violation of a minimum standard by an agency foster home or agency foster group home that poses a high degree of risk to a child in the care of the home who is under the age of six; and

(4) conduct at least one annual enforcement team conference for each child-placing agency to thoroughly review the investigations or inspections of the child-placing agency and all of its agency homes to monitor and enforce compliance by a child-placing agency with rules and standards established under Section 42.042.

(f) The department shall use an inspection checklist that includes a list of all required items for inspection in conducting a monitoring inspection under this section.

§42.0441. Inspection Results for Certain Nonresidential Child-Care Facilities.

Immediately after completing a monitoring inspection of a licensed day-care center, licensed group day-care home, or registered family home under Section 42.044, the authorized representative of the department shall review the results of the monitoring inspection with a representative of the facility and give the facility an opportunity to respond to the inspection results.

§42.04411. Inspection Results and Exit Conference for Residential Child-Care Facilities.

(a) On completion of an inspection of a residential child-care facility under Section 42.044, the inspector shall hold an exit conference with a representative of the inspected facility. The inspector shall provide to the representative a copy of the inspection checklist used by the inspector.

(b) The inspector shall provide the representative an opportunity to communicate regarding potential violations.

§42.04412. Interference With Inspection; Court Order.

(a) A person may not interfere with an investigation or inspection of a facility or family home conducted by the department under this chapter.

(b) During an investigation or inspection of a facility or family home under this chapter, the facility or family home shall cooperate with the department and allow the department to:

(1) access the records of the facility or family home;

(2) access any part of the premises of the facility or family home; and

(3) interview any child, employee, or other person who is present at the facility or family home and who may have information relevant to the investigation or inspection.

(c) If access to the records or premises of the facility or family home cannot be obtained, a district court in Travis County or in the county in which the facility or family home is located, for good cause shown and without prior notice or a hearing, shall issue an order granting the department access to the records or premises in order to conduct the inspection, investigation, or interview.

(d) To assist the department in investigating whether a person is operating a facility or family home without a required license, certification, registration, or listing, a district court in Travis County or in the county in which the suspected facility or family home is located may, for good cause shown and without prior notice or a hearing, issue an order allowing the department to enter the suspected facility or family home at a time when the department's evidence shows that the suspected facility or family home may be providing child care subject to regulation under this chapter.

§42.0442. Coordination of inspections; Elimination of Duplicative Inspections.

(a) The department shall coordinate monitoring inspections of licensed day-care centers, licensed group day-care homes, and registered family homes performed by another state agency to eliminate redundant inspections.

(b) [Repealed by Acts 2013, 84th Leg. (S.B. 277)]

(c) Each state agency that inspects a facility listed in Subsection (a) shall use an inspection checklist established by the department in performing an inspection. A state agency shall make a copy of the completed inspection checklist available to the facility at the facility's request to assist the facility in maintaining records.

(d) The department shall provide to facilities listed in Subsection (a) information regarding inspections, including who may inspect a facility and the purpose of each type of inspection.

§42.04425. Inspection Information Database.

(a) If feasible using available information systems, the department shall establish a computerized database containing relevant inspection information on licensed day-care centers, licensed group day-care homes, and registered family homes from other state agencies and political subdivisions of the state.

(b) The department shall make the data collected by the department available to another state agency or political subdivision of the state for the purpose of administering programs or enforcing laws within the jurisdiction of that agency or subdivision. If feasible using available information systems, the department shall make the data directly available to the Department of State Health Services, the Department of Aging and Disability Services, and the Texas Workforce Commission through electronic information systems. The department, the Department of State Health Services, the Department of Aging and Disability Services, and the Texas Workforce Commission shall jointly plan the development of child-care inspection databases that, to the extent feasible, are similar in their design and architecture to promote the sharing of data.

(c) The department may provide inspection data on licensed day-care centers, licensed group day-care homes, or registered family homes to the public if the department determines that providing inspection data enhances consumer choice with respect to those facilities.

§42.0443. Coordination of Fire Safety and Sanitation Inspections.

(a) The department may not inspect a licensed day-care center, licensed group day-care home, or registered family home for compliance with the department's fire safety or sanitation standards if the facility, at the time of the department's inspection, provides the department with documentation relating to a current fire safety or sanitation inspection, as applicable, performed by a political subdivision of this state that indicates that the facility is in compliance with the applicable standards of the political subdivision.

(b) If the documentation provided under Subsection (a) indicates that the facility was required to take corrective action or that the political subdivision imposed a restriction or condition on the facility, the department shall determine whether the facility took the required corrective action or complied with the restriction or condition.

(c) The department may inspect a facility subject to this section for compliance with the department's fire safety or sanitation standards if:

(1) the facility does not provide the documentation described by Subsection (a); or

(2) the department determines that the facility did not take a corrective action or comply with a restriction or condition described by Subsection (b).

(d) Notwithstanding any other provision of this section, the department shall report to the appropriate political subdivision any violation of fire safety or sanitation standards observed by the department at a facility subject to this section.

(e) The executive commissioner shall adopt rules necessary to implement this section.

§42.04431. Enforcement of State Law by County or Municipality.

(a) A municipality or a county may enforce state law and rules adopted under state law concerning fire safety standards at a licensed group day-care home or a registered family home.

(b) A municipality or county shall report to the department any violation of fire safety standards observed by the municipality or county at a licensed group day-care home or registered family home.

§42.0445. Required Background Search of Central Registry of Reported Cases of Child Abuse or Neglect.

(a) Before the department issues a license, listing, registration, or certification under this subchapter, the department shall search the central registry of reported cases of child abuse or neglect established under Section 261.002, Family Code, to determine whether the applicant or the owner or an employee of the facility or family home is listed in the registry as a person who abused or neglected a child.

(b) The executive commissioner may adopt rules to implement this section.

§42.0446. Removal of Certain Investigation Information From Internet Website.

The executive commissioner shall adopt rules providing a procedure by which the department removes from the department's Internet website information with respect to a child-care facility or registered family home that relates to an anonymous complaint alleging that the facility or family home failed to comply with the department's minimum standards if, at the conclusion of an investigation, the department determines that the complaint is false or lacks factual foundation.

§42.0447. False Report; Criminal Penalty.

(a) A person commits an offense if the person knowingly or intentionally files a complaint alleging that a child-care facility or registered family home failed to comply with the department's minimum standards and the person knows the allegation is false or lacks factual foundation.

(b) An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a state jail felony.

§42.0448. Notification of Family Violence Calls.

The department shall notify a child-placing agency of each family violence report the department receives under Article 5.05, Code of Criminal Procedure, that:

(1) occurred at an agency foster home verified by the child-placing agency; or

(2) involves a person who resides at an agency foster home verified by the child-placing agency.

§42.0449. Required Actions After Notice of Family Violence Call.

The executive commissioner shall adopt rules specifying the actions that the department, an independent foster home, and a child-placing agency shall take after receiving notice of a family violence report under Article 5.05, Code of Criminal Procedure, or Section 42.0448 to ensure the health, safety, and welfare of each child residing in the licensed foster home or verified agency foster home.

§42.045. Records.

(a) A person who operates a licensed or certified facility shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) A person who provides adoption services under a license to operate a child-placing agency shall furnish information required by the department to determine whether adoption related income and disbursements are reasonable, appropriate, and in compliance with the department's minimum standards.

(c) If a child-placing agency terminates operation as a child-placing agency, it shall, after giving notice to the department, transfer its files and records concerning adopted children, their biological families, and their adoptive families to the vital statistics unit of the Department of State Health Services or, after giving notice to the vital statistics unit, to a facility licensed by the department to place children for adoption.

(d) An independent foster home and a child-placing agency shall notify the department of any change of address for a licensed foster home or a verified agency foster home. The independent foster home and child-placing agency shall notify the department of the address change within the earlier of two business days or 72 hours of the date the foster home changes its address.

§42.0451. Database of Foster Homes; Information Provided to Department of Public Safety.

(a) The department shall maintain a database of licensed foster homes and verified agency foster homes including the current address for each licensed or verified home as reported to the department. The database must be updated on a regular basis.

(b) The department shall make the database available to the Department of Public Safety for the purposes of Subsection (c).

(c) The Department of Public Safety shall include the information provided under Subsection (b) in the Texas Crime Information Center database and establish a procedure by which a peace officer or employee of a law enforcement agency who provides the department with a street address is automatically provided information as to whether the address is licensed as a foster home or verified as an agency foster home under this chapter.

(d) Information provided to the Department of Public Safety under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

§42.0452. Foster Parent Rights and Responsibilities Statement.

(a) The department shall develop a statement that lists the rights and responsibilities of a foster parent in a foster home or an agency foster home and of the department or a child-placing agency, as applicable.

(b) The department shall provide a written copy of the statement developed under Subsection (a) to each foster parent in a foster home and to each child-placing agency licensed by the department. A child-placing agency shall provide a written copy of the statement developed under Subsection (a) to each foster parent in an agency foster home verified by the child-placing agency.

§42.046. Application for License, Listing, or Registration.

(a) An applicant for a license to operate a child-care facility or child-placing agency or for a listing or registration to operate a family home shall submit to the department the appropriate fee prescribed by Section 42.054 and a completed application on a form provided by the department.

(b) The department shall supply the applicant the application form and a copy of the appropriate minimum standards, if applicable.

(c) After receiving an application, the department shall investigate the applicant and the plan of care for children, if applicable.

(d) The department shall complete the investigation and decide on an application within two months after the date the department receives a completed application.

(e) The department may deny an application under this section if the applicant:

(1) has a residential child-care facility license revoked in another state; or

(2) is barred from operating a residential child-care facility in another state.

§42.0461. Public Notice and Hearing in Certain Counties: Residential Child Care.

(a) Before the department may issue a license or certificate for the operation or the expansion of the capacity of a foster group home or foster family home that is located in a county with a population of less than 300,000 and that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker or of a general residential operation, the applicant for the license, certificate, or expansion shall, at the applicant's expense:

(1) conduct a public hearing on the application in accordance with department rules after notifying the department of the date, time, and location of the hearing; and

(2) publish notice of the application in a newspaper of general circulation in the community in which the child-care services are proposed to be provided.

(b) The notice required by Subsection (a)(2) must be published at least 10 days before the date of the public hearing required by Subsection (a)(1) and must include:

(1) the name and address of the applicant;

(2) the address at which the child-care services are proposed to be provided;

(3) the date, time, and location of the public hearing;

(4) the name, address, and telephone number of the department as the licensing authority; and

(5) a statement informing the public that a person may submit written comments to the department concerning the application instead of or in addition to appearing at the public hearing.

(c) The department shall require a representative of the department to attend the public hearing in an official capacity for the purpose of receiving public comments on the application.

(d) Before issuing a license or certificate described by Subsection (a), the department shall consider:

(1) the amount of local resources available to support children proposed to be served by the applicant;

(2) the impact of the proposed child-care services on the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the effect, if any, on the children proposed to be served by the applicant; and

(3) the impact of the proposed child-care services on the community and the effect on opportunities for social interaction for the children proposed to be served by the applicant.

(e) The department may deny the application if the department determines that:

(1) the community has insufficient resources to support children proposed to be served by the applicant;

(2) granting the application would significantly increase the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the increase would adversely affect the children proposed to be served by the applicant; or

(3) granting the application would have a significant adverse impact on the community and would limit opportunities for social interaction for the children proposed to be served by the applicant.

(f) A child-placing agency that proposes to verify an agency foster home or agency foster group home that is located in a county with a population of less than 300,000 that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker shall:

(1) comply with the notice and hearing requirements imposed by Subsections (a) and (b); and

(2) after conducting the required public hearing, provide the department with information relating to the considerations specified in Subsection (d).

(g) The department may prohibit the child-placing agency from verifying the proposed agency foster home or agency foster group home on the same grounds that the department may deny an application under Subsection (e). The department may invalidate the verification of an agency foster home or agency foster group home that was not verified using the procedures required by Subsection (f) on or after September 1, 1997.

§42.0462. Waiver of Notice and Hearing Requirements.

To protect the safety and well-being of residents and employees of a general residential operation that provides comprehensive residential services to children who are victims of trafficking, the department shall waive the notice and hearing requirements imposed under Section 42.0461 for an applicant who submits to the department an application to provide trafficking victim services at the applicants general residential operation.

§42.047. Consultations.

(a) The department shall offer consultation to potential applicants, applicants, and license, listing, registration, and certification holders about meeting and maintaining standards for licensing, listing, registration, and certification and achieving programs of excellence in child care.

(b) The department shall offer consultation to prospective and actual users of facilities or homes.

§42.048. Licensing.

(a) The department shall issue a license after determining that an applicant has satisfied all requirements.

(b) When issuing a license, the department may impose restrictions on a facility, including the number of children to be served and the type of children to be served.

(c) The department may grant a variance of an individual standard set forth in the applicable standards for good and just cause.

(d) A license holder must display a license issued under this chapter in a prominent place at the facility.

(e) A license issued under this chapter is not transferable and applies only to the operator and facility location stated in the license application. Except as provided by this subsection, a change in location or ownership automatically revokes a license. A change in location of a child-placing agency does not automatically revoke the license to operate the child-placing agency.

(f) A license must be issued if the department determines that a facility meets all requirements. The evaluation shall be based on one or more visits to the facility and a review of required forms and records. A license is valid until the license expires, is revoked, or is surrendered.

§42.049. Liability Insurance Required.

(a) A license holder shall maintain liability insurance coverage in the amount of $300,000 for each occurrence of negligence. An insurance policy or contract required under this section must cover injury to a child that occurs while the child is on the premises of the license holder or in the care of the license holder.

(b) A license holder shall file with the department a certificate or other evidence from an insurance company showing that the license holder has an unexpired and uncancelled insurance policy or contract that meets the requirements of this section.

(c) Should the license holder for financial reasons or for lack of availability of an underwriter willing to issue a policy be unable to secure the insurance required under Subsection (a) or should the policy limits be exhausted, the license holder shall notify the parent or a person standing in parental relationship to each child for whom the license holder provides care a written notice that the liability coverage is not provided and there will not be a ground for suspension or revocation of the license holder's license under this chapter. The license holder shall also notify the department that the coverage is not provided and provide the reason for same. In no case shall the inability to secure coverage serve to indemnify the license holder for damages due to negligence.

(d) The insurance policy or contract shall be maintained at all times in an amount as required by this section. Failure by a license holder to renew the policy or contract or to maintain the policy or contract in the required amount is a ground for suspension or revocation of the license holder's license under this chapter.

(e) This section does not apply to a group day-care home or a listed or registered family home.

§42.050. License Renewal.

(a) A license holder may apply for renewal of a license in compliance with the requirements of this chapter and department rules.

(b) The application for renewal of a license must be completed and decided on by the department before the expiration of the license under which a facility is operating.

(c) The department shall evaluate the application for renewal of a license to determine if all licensing requirements are met. The evaluation may include a specified number of visits to the facility and must include a review of all required forms and records.

(d) The executive commissioner shall adopt rules governing the license renewal process for all licenses issued under this chapter. The rules must include:

(1) renewal periods;

(2) a process for staggered renewals;

(3) a process for resolving a late application for renewal;

(4) expiration dates; and

(5) conditions for renewal.

§42.051. Initial License.

(a) The department shall issue an initial license when a facility's plans meet the department's licensing requirements and one of the following situations exists:

(1) the facility is not currently operating;

(2) the facility has relocated and has made changes in the type of child-care service it provides; or

(3) there is a change in ownership of the facility resulting in changes in policy and procedure or in the staff who have direct contact with the children.

(b) An initial license is valid for six months from the date it is issued and may be renewed for an additional six months.

§42.052. Certification, Listing, and Registration.

(a) A state-operated child-care facility or child-placing agency must receive certification of approval from the department. The certification of approval remains valid until the certification expires, is revoked, or is surrendered.

(b) To be certified, a facility must comply with the department's rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c) A family home that provides care for compensation for three or fewer children, excluding children who are related to the caretaker, shall list with the department if the home provides regular care in the caretaker's own residence. The home may register with the department.

(d) A family home that provides care for four or more children, excluding children who are related to the caretaker, shall register with the department. A family home that provides care exclusively for any number of children who are related to the caretaker is not required to be listed or registered with the department.

(e) A registration remains valid until the registration expires, is revoked, or is surrendered. The operator of a registered home must display the registration in a prominent place at the home.

(e-1) A listing remains valid until the listing is revoked or surrendered.

(f) To remain listed or registered with the department, a family home must comply with the department's rules and standards, if applicable, and any provision of this chapter that applies to a listed or registered family home.

(f-1) The executive commissioner shall adopt rules governing the certification and registration renewal process for all certifications and registrations issued under this chapter. The rules must include:

(1) renewal periods;

(2) a process for staggered renewals;

(3) a process for resolving a late application for renewal;

(4) expiration dates; and

(5) conditions for renewal.

(g) The certification requirements of this section do not apply to a Texas Juvenile Justice Department facility, or a facility providing services solely for the Texas Juvenile Justice Department.

(h) The certification requirements of this section do not apply to a juvenile detention facility certified under Section 51.12, Family Code, or a juvenile correctional facility certified under Section 51.125, Family Code.

(i) The department shall provide to a listed family home a copy of the listing. A listing must contain a provision that states: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED." The operator of a listed home is not required to display the listing in a prominent place at the home but shall make the listing available for examination. The executive commissioner by rule shall provide for a sufficient period to allow operators of family homes to comply with the listing requirement of this section.

(j) The operator of a listed family home shall undergo initial and subsequent background and criminal history checks required under Section 42.056. If the operator of a listed family home fails to submit the information required by Section 42.056 for a subsequent background and criminal history check, the department shall automatically:

(1) suspend the home's listing until the required information is submitted; and

(2) revoke the home's listing if the required information is not submitted within six months after the date the automatic suspension begins.

(j-1) A suspension or revocation under Subsection (j) is not a suspension or revocation under Section 42.072.

(k) The department shall issue a listing or registration to a family home, as appropriate, in both English and Spanish when the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in which the family home is located is of Hispanic origin or Spanish-speaking.

§42.0521. Deposit of Fees.

The fees authorized by this chapter and received by the department shall be deposited in the general revenue fund.

§42.0522. Public Advertising of Family Homes.

(a) A family home may not place a public advertisement that uses the title "registered family home" or any variation of that phrase unless the home is registered under this chapter. Any public advertisement for a registered family home that uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

(b) A family home may not place a public advertisement that uses the title "listed family home" or any variation of that phrase unless the home is listed as provided by this chapter. Any public advertisement for a listed family home that uses the title "listed family home" must contain a provision in bold type stating: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."

§42.0523. Listing of Relative Child-Care Providers.

(a) A child-care provider who only provides child care under Chapter 313, Labor Code, to children related to the provider may list the provider's home as a family home.

(b) Before the department may list a child-care provider's home under this section, in addition to conducting the background or criminal history check required under Section 42.056, the department must search the central database of sex offender registration records maintained by the Department of Public Safety under Chapter 62, Code of Criminal Procedure, to determine whether the provider is listed in the registry as a sex offender.

(c) The address of a family home listed under this section is the address of the child-care provider's home, regardless of whether the child care is provided in the provider's home or in the child's home.

(d) A relative child-care provider's home listed as a family home under this section is exempt from the health and safety requirements of 45 C.F.R. Section 98.41(a).

§42.053. Agency Foster Homes and Agency Foster Group Homes.

(a) An agency foster home or agency foster group home is considered part of the child-placing agency that operates the agency foster home or agency foster group home for purposes of licensing.

(b) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency foster home or agency foster group home used by the agency.

(c) An agency foster home or agency foster group home shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(d) The department shall revoke or suspend the license of a child-placing agency if an agency foster home or agency foster group home operated by the licensed agency fails to comply with Subsection (c).

§42.0531. Secure Agency Foster Homes and Secure Agency Foster Group Homes.

(a) The commissioner's court of a county or governing body of a municipality may contract with a child-placing agency to verify a secure agency foster home or secure agency foster group home to provide a safe and therapeutic environment tailored to the needs of children who are victims of trafficking.

(b) A child-placing agency may not verify a secure agency foster home or secure agency foster group home to provide services under this section unless the child-placing agency holds a license issued under this chapter that authorizes the agency to provide services to victims of trafficking in accordance with department standards adopted under this chapter for child-placing agencies.

(c) A secure agency foster home or secure agency foster group home verified under this section must provide:

(1) mental health and other services specifically designed to assist children who are victims of trafficking under Section 20A.02 or 20A.03, Penal Code, including:

(A) victim and family counseling;

(B) behavioral health care;

(C) treatment and intervention for sexual assault;

(D) education tailored to the child's needs;

(E) life skills training;

(F) mentoring; and

(G) substance abuse screening and treatment as needed;

(2) individualized services based on trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;

(3) 24-hour services; and

(4) appropriate security through facility design, hardware, technology, and staffing.

§42.0535. Required Information for Verification.

(a) A child-placing agency that seeks to verify an agency home or an agency group home shall request background information about the agency home or group home from a child-placing agency that has previously verified that agency home or agency group home.

(b) Notwithstanding Section 261.201, Family Code, a child-placing agency that has verified an agency home or an agency group home is required to release to another child-placing agency background information requested under Subsection (a).

(c) A child-placing agency that releases background information under this section is immune from civil and criminal liability for the release of the information.

(d) For purposes of this section, background information means the home study under which the agency home or agency group home was verified by the previous child-placing agency and any record of noncompliance with state minimum standards received and the resolution of any such noncompliance by the previous child-placing agency.

(e) The executive commissioner by rule shall develop a process by which a child-placing agency shall report to the department:

(1) the name of any verified foster home or foster group home that has been closed for any reason, including a voluntary closure;

(2) information regarding the reasons for the closure of the foster home or foster group home; and

(3) the name and other contact information of a person who may be contacted by another child-placing agency to obtain the records relating to the closed foster home or foster group home that are required to be maintained and made available under this section.

(f) Information gathered under Subsection (e) must be made available to child-placing agencies through a searchable database maintained by the department.

§42.0536. Transfer of Agency Foster Home.

(a) An agency foster home that is verified by a child-placing agency may transfer to another child-placing agency only if, before the date of the transfer, the agency foster home notifies the child-placing agency to which the agency foster home is transferring of each licensing violation for which the agency foster home has been cited by the department during the preceding three years.

(b) The child-placing agency to which the agency foster home is transferring shall submit a written request for transfer to the child-placing agency that verified the agency foster home.

(c) Not later than the 10th day after the date the child-placing agency receives a request for transfer under Subsection (b), the child-placing agency shall provide the child-placing agency that submitted the request a copy of any of the following documents regarding the agency foster home:

(1) a corrective action plan;

(2) an annual development plan; or

(3) a description of any imposed or potential service limitation.

(d) The department caseworker for each child placed in the agency foster home may conduct a review meeting to determine whether the transfer of the agency foster home is in the best interest of each child in the home on the request of:

(1) the child-placing agency to which the agency foster home is transferring;

(2) the child-placing agency that verified the agency foster home;

(3) the agency foster home; or

(4) the caseworker.

(e) After a review meeting, the caseworker shall determine whether each child placed in the agency foster home shall:

(1) stay in the agency foster home after the agency foster home is transferred to the new child-placing agency; or

(2) be removed from the agency foster home before the agency foster home is transferred to the new child-placing agency.

§42.054. Fees.

(a) The department shall charge an applicant a nonrefundable application fee for an initial license to operate a child-care facility or a child-placing agency.

(b) The department shall charge each child-care facility a fee for an initial license. The department shall charge each child-placing agency a fee for an initial license.

(c) The department shall charge each licensed child-care facility an annual license fee. The fee is due on the date on which the department issues the child-care facility's initial license and on the anniversary of that date.

(d) The department shall charge each licensed child-placing agency an annual license fee. The fee is due on the date on which the department issues the child-placing agency's initial license and on the anniversary of that date.

(e) The department shall charge each family home that is listed or registered with the department an annual fee. The fee is due on the date on which the department initially lists or registers the home and on the anniversary of that date.

(f) If a facility, agency, or home fails to pay the annual fee when due, the license, listing, or registration, as appropriate, is automatically suspended until the fee is paid. The license, listing, or registration shall be revoked if the fee is not paid within six months after the date the automatic suspension begins. A suspension or revocation under this subsection is not a suspension or revocation under Section 42.072.

(g) The provisions of Subsections (b) through (f) do not apply to:

(1) licensed foster homes and licensed foster group homes;

(2) nonprofit facilities regulated under this chapter that provided 24-hour care for children in the managing conservatorship of the department during the 12-month period immediately preceding the anniversary date of the facility's license;

(3) facilities operated by a nonprofit corporation or foundation that provides 24-hour residential care and does not charge for the care provided; or

(4) a family home listed under Section 42.0523 in which the relative child-care provider cares for the child in the child's own home.

(h) The executive commissioner by rule shall set fees under this section.

§42.055. Sign Posting.

(a) Each child-care facility shall post in a location that is conspicuous to all employees and customers a sign that includes:

(1) a description of the provisions of the Family Code relating to the duty to report child abuse or neglect;

(2) a description of the penalties for violating the reporting provisions of the Family Code; and

(3) a brief description of sudden infant death syndrome, shaken-baby syndrome, and childhood diabetes and methods for preventing those phenomena.

(a-1) A licensed day-care center, licensed group day-care home, or registered family home subject to Section 42.0423 shall include in the sign required under Subsection (a) a description of how to access a listing of unsafe children's products on the United States Consumer Product Safety Commission's Internet website or through the department's public Internet website.

(b) The executive commissioner by rule shall determine the design, size, and wording of the sign.

(c) The department shall provide the sign to each child-care facility without charge.

(d) A person who operates a child-care facility commits an offense if the department provides a sign to the facility as provided by this section and the person intentionally fails to display the sign in the facility as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

§42.0551. Posting of Employee List.

(a) Each day-care center, group day-care home, and family home shall post a list of all current employees at the center or home in accordance with rules adopted by the executive commissioner.

(b) The executive commissioner shall adopt rules regarding the size, wording, and placement of the list required under this section.

§42.056. Required Background and Criminal History Checks; Criminal Penalties.

(a) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a child-care facility, child-placing agency, or family home shall, when applying to operate a child-care facility or child-placing agency or when listing or registering a family home and at least once during each 24 months after receiving a license, listing, registration, or certification of approval, submit to the department for use in conducting background and criminal history checks the name of:

(1) the director, owner, and operator of the facility, agency, or home;

(2) each person employed at the facility, agency, or home;

(3) each prospective employee of the facility, agency, or home;

(4) each current or prospective foster parent providing foster care through a child-placing agency;

(5) each prospective adoptive parent seeking to adopt through a child-placing agency;

(6) each person at least 14 years of age, other than a client in care, who:

(A) is counted in child-to-caregiver ratios in accordance with the minimum standards of the department;

(B) will reside in a prospective adoptive home if the adoption is through a child-placing agency;

(C) has unsupervised access to children in care at the facility or family home; or

(D) resides in the facility or family home; or

(7) each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home, while children are being provided care.

(a-1) Notwithstanding Subsection (a), the director, owner, or operator of a residential child-care facility is not required to submit to the department the information required under that subsection for use in conducting a background and criminal history check on a parent or other relative of a child who is a client in care at the facility if:

(1) the department has on file for the parent or relative a background and criminal history check; and

(2) the background and criminal history check was conducted within the two-year period preceding the date the parent or relative visits the client at the facility.

(a-2) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a residential child-care facility, listed or registered family home, group day-care home, day-care center, before-school or after-school program, or school-age program shall submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a), unless the person is only required to have the person's name submitted based on criteria specified by Subsection (a)(7). This subsection does not apply to a family home that is subject to regulation by the department under Section 42.0523.

(a-3) Repealed by Acts 2013, 83rd Leg., eff. September 2013.

(a-4) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a facility or listed or registered family home shall submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a) if:

(1) the person resided in another state during the five years preceding the date the person's name was required to be submitted under Subsection (a); or

(2) the director, owner, or operator has reason to suspect that the person has a criminal history in another state.

(a-5) The rules adopted by the executive commissioner under Subsections (a-2) and (a-4):

(1) must require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for conducting a criminal history check;

(2) may require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) may allow the department to waive the submission of fingerprints required by this section if:

(A) the person for whom the submission is required has:

(i) a fingerprint-based criminal history record check on file with the department; or

(ii) a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845, Government Code, that is accessible to the department through the Department of Public Safety; and

(B) the date on which the current submission of fingerprints is required occurs before the second anniversary of a previous name-based criminal history check of the person.

(b) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(b-1) In addition to any other background or criminal history check conducted under Subsection (b), for each person whose fingerprints are submitted under Subsection (a-2) or (a-4), the department shall conduct a state and Federal Bureau of Investigation criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to the Department of Public Safety for the purpose of conducting a state and federal criminal history check; and

(2) using the resulting information made available by that department under Section 411.114, Government Code, and by the Federal Bureau of Investigation and any other criminal justice agency under Section 411.087, Government Code.

(c) The executive commissioner by rule shall require a child-care facility, child-placing agency, or listed or registered family home to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

(f) As part of a background check under this section, the department shall provide any relevant information available in the department's records regarding a person's previous employment in a facility or family home to the person submitting the request.

(g) Except as otherwise provided by this subsection, a person whose name is submitted under Subsection (a) may not provide direct care or have direct access to a child in a facility or family home before the person's background and criminal history checks under Subsections (b) and (b-1) are completed. A person may be employed at a facility or family home and may provide direct care or have direct access to a child in the facility or family home before the person's criminal history check under Subsection (b-1) is completed if:

(1) the facility or family home is experiencing a staff shortage;

(2) the state criminal history check and the background check using the department's records of reported abuse and neglect have been completed under Subsection (b), and the resulting information does not preclude the person from being present at the facility or family home; and

(3) the person's fingerprints are submitted as soon as possible, but not later than the 30th day after the earliest of the date on which the person first:

(A) provides direct care to a child;

(B) has direct access to a child; or

(C) is hired.

(h) If the results of a criminal history check under Subsection (b-1) for a person employed by a facility or family home during a staffing shortage as authorized by Subsection (g) preclude the person from being present at the facility or family home, the director, owner, or operator of the facility or family home shall immediately terminate the person's employment.

(i) A director, owner, or operator of a facility or family home commits an offense if the director, owner, or operator knowingly:

(1) fails to submit to the department information about a person as required by this section and department rules for use in conducting background and criminal history checks with respect to the person; and

(2) employs the person at the facility or family home or otherwise allows the person to regularly or frequently stay or work at the facility or family home while children are being provided care.

(j) A director, owner, or operator of a facility or family home commits an offense if, after the date the director, owner, or operator receives notice from the department that, based on the results of a person's background or criminal history check, the person is precluded from being present at the facility or family home, the director, owner, or operator knowingly:

(1) employs the person at the facility or family home; or

(2) otherwise allows the person to regularly or frequently stay or work at the facility or family home while children are being provided care.

(k) An offense under Subsection (i) or (j) is a Class B misdemeanor.

(l) In accordance with rules adopted by the executive commissioner, a person that contracts to provide one or more substitute employees to a facility or family home must submit to the department for use in conducting background and criminal history checks the name of each substitute employee. Before a substitute employee may be present at a facility or family home, the employee must meet the same requirements under this section as an employee present at the facility or family home who performs similar duties. The director, owner, or operator of a facility or family home must verify with the department that a substitute employee is eligible to be present at the facility or family home before allowing the employee to begin work.

§42.0561. Information Relating to Family Violence Reports.

Before the department may issue a license or registration for a foster home or a child-placing agency may issue a verification certificate for an agency foster home, the department or child-placing agency must obtain information relating to each family violence report at the applicant's residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.

§42.057. Drug Testing.

(a) Each residential child-care facility shall establish a drug testing policy for employees. A residential child-care facility may adopt the model employee drug testing policy adopted by the executive commissioner under Subsection (b) or may use another employee drug testing policy approved by the executive commissioner.

(b) The executive commissioner by rule shall adopt a model employee drug testing policy for use by a residential child-care facility. The policy must be designed to ensure the safety of resident children through appropriate drug testing of employees while protecting the rights of employees. The model policy must require:

(1) preemployment drug testing;

(2) random, unannounced drug testing of each employee who has direct contact with a child in the care of the facility;

(3) drug testing of an employee against whom there is an allegation of drug abuse; and

(4) drug testing of an employee whom the department is investigating for the abuse or neglect of a child in the care of the facility, if the allegation of abuse or neglect includes information that provides good cause to suspect drug abuse.

(c) The department shall require a drug test of a person who directly cares for or has access to a child in a residential child-care facility within 24 hours after the department receives notice of an allegation that the person has abused drugs.

(d) An employee may not provide direct care or have direct access to a child in a residential child-care facility before completion of the employee's initial drug test.

(e) A residential child-care facility shall pay any fee or cost associated with performing the drug test for an employee.

§42.058. Competitive Bidding or Advertising Rules.

(a) The executive commissioner may not adopt rules restricting competitive bidding or advertising by a license holder or registration holder except to prohibit false, misleading, or deceptive practices or to prevent a violation of this chapter.

(b) Rules to prohibit false, misleading, or deceptive practices may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's or registration holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder or registration holder; or

(4) restricts the license holder's or registration holder's advertisement under a trade name.

§42.059. Required Affidavit for Applicants for Employment With Facility or Registered Family Home.

(a) An applicant for temporary or permanent employment with a licensed facility or registered family home whose employment or potential employment with the facility or home involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF _____

COUNTY OF _____

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;
2. Pleaded guilty to (whether or not resulting in a conviction);
3. Pleaded nolo contendere or no contest to;
4. Admitted;
5. Had any judgment or order rendered against me (whether by default or otherwise);
6. Entered into any settlement of an action or claim of;
7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;
8. Resigned under threat of termination of employment or volunteerism for;
9. Had a report of child abuse or neglect made and substantiated against me for; or
10. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;
2. Rape or other sexual assault;
3. Physical, sexual, emotional abuse and/or neglect of a minor;
4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;
12. Endangerment of a child;
13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;
14. Unfitness as a parent or custodian;
15. Removing children from a state or concealing children in violation of a court order;
16. Restrictions or limitations on contact or visitation with children or minors resulting from a court order protecting a child or minor from abuse, neglect, or exploitation; or
17. Any type of child abduction.

Except the following (list all incidents, location, description, and date) (if none, write NONE)

Signed _____

Date _____.

Subscribed and sworn to (or affirmed) before me this _____ day of _____,_____.

Signature of notarial officer

_____.

(seal, if any, of notarial officer)

My commission expires: _____

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

§42.060. Carbon Monoxide Detectors.

(a) In this section, "carbon monoxide detector" means a device that detects and sounds an alarm to indicate the presence of a harmful level of carbon monoxide gas.

(b) Except as provided by Subsection (d), each day-care center, group day-care home, and family home must be equipped with carbon monoxide detectors in accordance with department rules.

(c) The executive commissioner by rule shall prescribe requirements regarding the placement, installation, and number of carbon monoxide detectors and maintenance procedures for those detectors.

(d) A day-care center is exempt from the carbon monoxide detector requirements prescribed by this section if the day-care center is located in a school facility that is subject to the school facility standards adopted by the commissioner of education under Section 46.008, Education Code, or similar safety standards adopted by the board of a local school district.

§42.062. Certain Employment and Service Prohibited.

A person may not be employed as a controlling person or serve in that capacity in a facility or family home if the person is not eligible to receive a license or certification for the operation of a facility or family home under Section 42.072(g) or who has been denied a license under Section 42.046 for a substantive reason.

§42.063. Reporting of Incidents and Violations.

(a) In this section, "serious incident" means a suspected or actual incident that threatens or impairs the basic health, safety, or well-being of a child. The term includes:

(1) the arrest, abuse, neglect, exploitation, running away, attempted suicide, or death of a child;

(2) a critical injury of a child; and

(3) an illness of a child that requires hospitalization.

(b) A person licensed under this chapter shall report to the department each serious incident involving a child who receives services from the person, regardless of whether the department is the managing conservator of the child.

(c) An employee of a person described by Subsection (b) shall report suspected abuse or neglect directly to the statewide intake system.

(d) An employee or volunteer of a general residential operation, child-placing agency, foster home, or foster group home shall report any serious incident directly to the department if the incident involves a child under the care of the operation, agency, or home.

(e) A foster parent shall report any serious incident directly to the department if the incident involves a child under the care of the parent.

(f) The executive commissioner by rule shall prescribe:

(1) procedures governing reporting required under this section; and

(2) the manner in which a report under this section must be provided.

(g) The department shall implement this section using existing appropriations.

§42.064. Information Regarding Gang-Free Zones.

Each day-care center shall, in accordance with rules adopted by the executive commissioner, distribute to parents and guardians of children who attend the center information on gang-free zones and the consequences of engaging in organized criminal activity within those zones.

§42.065. Administering Medication.

(a) In this section, "medication" means a drug that may be obtained with or without a prescription, excluding a topical ointment obtained without a prescription.

(b) This section applies only to a day-care center, group day-care home, before-school or after-school program, school-age program, or

family home regardless of whether the facility or program is licensed, registered, or listed.

(c) A director, owner, operator, caretaker, employee, or volunteer of a child-care facility subject to this section may not administer a medication to a child unless:

(1) the child's parent or guardian has submitted to the child-care facility a signed and dated document that authorizes the facility to administer the medication for not longer than one year; and

(2) the authorized medication:

(A) is administered as stated on the label directions or as amended in writing by a practitioner, as defined by Section 551.003, Occupations Code; and

(B) is not expired.

(d) Notwithstanding Subsection (c)(1), a director, owner, operator, caretaker, employee, or volunteer of a child-care facility subject to this section may administer medication to a child under this section without a signed authorization if the child's parent or guardian:

(1) submits to the child-care facility an authorization in an electronic format that is capable of being viewed and saved; or

(2) authorizes the child-care facility by telephone to administer a single dose of a medication.

(e) An authorization under Subsection (d)(1) expires on the first anniversary of the date the authorization is provided to the child-care facility.

(f) This section does not apply to a person that administers a medication to a child in a medical emergency to prevent the death or serious bodily injury of the child if the medication is administered as prescribed, directed, or intended.

(g) A person commits an offense if the person administers a medication to a child in violation of this section. If conduct constituting an offense under this section also constitutes an offense under a section of the Penal Code, the actor may be prosecuted under either section or both sections.

(h) An offense under this section is a Class A misdemeanor.

SUBCHAPTER D. REMEDIES

§42.0704. Enforcement Policy.

(a) The executive commissioner by rule shall adopt a general enforcement policy that describes the department's approach to enforcement of this chapter.

(b) The enforcement policy must:

(1) summarize the department's general expectations in enforcing this chapter;

(2) include the methodology required by Subsection (c); and

(3) describe the department's plan for strengthening its enforcement efforts and for making objective regulatory decisions.

(c) As part of the enforcement policy, the department shall develop and implement a methodology for determining the appropriate disciplinary action to take against a person who violates this chapter or a department rule. The methodology must provide guidance on when to use each of the available tools of enforcement, including technical assistance, voluntary plans of action, evaluation, probation, suspension or revocation of a license or registration, denial of a license or registration, administrative penalties, and emergency suspension. The methodology must allow the department to consider the circumstances of a particular case, including the nature and seriousness of the violation, history of previous violations, and aggravating and mitigating factors, in determining the appropriate disciplinary action.

(d) The department shall make the methodology described by Subsection (c) available to the public, including by posting the methodology on the department's Internet website.

§42.0705. Range of Penalties.

The department shall revoke or suspend a license or registration, place on probation a person whose license or registration has been suspended, or reprimand a license holder or registration holder for a violation of this chapter or a department rule. If a license or registration suspension is probated, the department may require the license holder or registration holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit services to the areas prescribed by the department;

(3) continue or review professional education until the license holder or registration holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation; or

(4) take corrective action relating to the violation on which the probation is based.

§42.071. Suspension, Evaluation, or Probation of License or Registration.

(a) The department may suspend the license of a facility or the registration of a family home that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license or registration.

(b) The department may suspend a facility's license or a family home's registration for a definite period rather than deny or revoke the license or registration if the department finds repeated noncompliance with standards that do not endanger the health and safety of children. To qualify for license or registration suspension under this subsection, a facility or family home must suspend its operations and show that standards can be met within the suspension period.

(c) If the department finds a facility or family home is in repeated noncompliance with standards that do not endanger the health and safety of children, the department may schedule the facility or family home for evaluation or probation rather than suspend or revoke the facility's license or the family home's registration. The department shall provide notice to the facility or family home of the evaluation or probation and of the items of noncompliance not later than the 10th day before the evaluation or probation period begins. The department shall designate a period of not less than 30 days during which the facility or family home will remain under evaluation. During the evaluation or probation period, the facility or family home must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department shall revoke the license of a facility or the registration of a family home that does not comply with standards at the end of a license or registration suspension.

(e) The department may suspend or revoke the license of a facility or the registration of a family home that does not correct items that were in noncompliance or that does not comply with required standards within the applicable evaluation or probation period.

§42.0715. Costs Charged to Facility or Family Home.

The department may charge a facility or family home for reimbursement of the reasonable cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan for the facility or family home.

§42.072. License, Listing, or Registration Denial, Suspension, or Revocation.

(a) The department may suspend, deny, revoke, or refuse to renew the license, listing, registration, or certification of approval of a facility or family home that does not comply with the requirements of this chapter, department standards and rules, or the specific terms of the license, listing, registration, or certification. The department may revoke the probation of a person whose license, listing, or registration is suspended if the person violates a term of the conditions of probation.

(b) If the department proposes to take an action under Subsection (a), the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. An action under this section, including a revocation of a person's license, is a contested case as defined by Chapter 2001, Government Code, and is subject to judicial review under the substantial evidence rule in accordance with that chapter. Rules of practice adopted by the executive commissioner under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

(c) The department may not issue a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked or whose application for a license, listing, registration, or certification is denied for a substantive reason under this chapter before the fifth anniversary of the date on which the revocation takes effect by department or court order or the decision to deny the application is final.

(c-1) A person described by Subsection (c) may not be a controlling person in any facility or family home during the five-year period in which the person is ineligible to receive a license, listing, registration, or certification.

(d) The executive commissioner by rule may provide for denial of an application or renewal for a licensed facility or for listing or registering a family home or may revoke a facility's license or a family home's listing or registration based on findings of background or criminal history as a result of a background or criminal history check.

(e) A person may continue to operate a facility or family home during an appeal of a license, listing, or registration revocation unless the operation of the facility or family home poses a risk to the health or safety of children. The executive commissioner shall by rule establish the criteria for determining whether the operation of a facility or family home poses a risk to the health or safety of children. The department shall notify the facility or family home of the criteria the department used to determine that the operation of the facility or family home poses a risk to health or safety and that the facility or family home may not operate. A person who has been notified by the department that the facility or home may not operate under this section may seek injunctive relief from a district court in Travis County or in the county in which the facility or home is located to allow operation during the pendency of an appeal. The court may grant injunctive relief against the department's action only if the court finds that the child-care operation does not pose a health or safety risk to children. A court granting injunctive relief under this subsection shall have no other jurisdiction over an appeal of final department action unless conferred by Chapter 2001, Government Code.

(f) The department shall deny an application or renewal for listing or registering a family home or shall revoke a family home's listing or registration if the results of a background or criminal history check conducted by the department under Section 42.056 show that a person has been convicted of an offense under Title 5 or 6, Penal Code, or Chapter 43, Penal Code.

(g) Notwithstanding Subsection (c), the department may refuse to issue a license, listing, registration, or certification to:

(1) a person whose license, listing, registration, or certification for a facility or family home was revoked by the department or by court order;

(2) a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the revocation of the license, listing, registration, or certification of the facility or family home;

(3) a person who voluntarily closed a facility or family home or relinquished the person's license, listing, registration, or certification after:

(A) the department took an action under Subsection (a) in relation to the facility, family home, or person; or

(B) the person received notice that the department intended to take an action under Subsection (a) in relation to the facility, family home, or person; or

(4) a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the closure of the facility or family home or relinquishment of the license, listing, registration, or certification in the manner described by Subdivision (3).

§42.073. Emergency Suspension and Closure of a Facility or Family Home.

(a) The department shall suspend a facility's license or a family home's listing or registration and order the immediate closing of the facility or family home if:

(1) the department finds the facility or family home is operating in violation of the applicable standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the children attending or residing in the facility or family home.

(b) An order suspending a license, listing, or registration and an order closing a facility or family home under this section is immediately effective on the date on which the holder of the license, listing, or registration receives written notice or on a later date specified in the order.

(c) An order is valid for 30 days after the effective date of the order.

§42.074. Injunctive Relief.

(a) The department may file suit in a district court in Travis County or in the county in which a facility or family home is located for assessment and recovery of a civil penalty under Section 42.075, for injunctive relief, including a temporary restraining order, or for both a civil penalty and injunctive relief when it appears that a person:

(1) has violated, is violating, or is threatening to violate the licensing, certification, listing, or registration requirements of this chapter or the department's licensing, certification, listing, or registration rules and standards; or

(2) knowingly fails to meet or maintain an exemption authorized under Section 42.041 and engages in activities that require a license or registration.

(b) The district court shall grant the injunctive relief the facts may warrant.

(c) At the department's request, the attorney general or the county or district attorney of the county in which the facility or family home is located shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a).

(d) Injunctive relief provided by this section is in addition to any other action, proceeding, or remedy authorized by law. It is not necessary to allege or prove in an action filed under this section that an adequate remedy at law does not exist or that substantial or irreparable harm would result from the continued violation.

(e) The department is not required to give an appeal bond in an action arising under this section.

§42.075. Civil Penalty.

(a) A person is subject to a civil penalty of not less than $50 nor more than $100 for each day of violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility or family home by violating a provision of this chapter or a department rule or standard;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period;

(3) places a public advertisement for an unlicensed facility or an unlisted or unregistered family home;

(4) knowingly fails to meet or maintain any criterion of an exemption authorized under Section 42.041 and engages in activities that require a license or registration; or

(5) fails to inform the department of a change in status and the person knows the change in status requires the person to be licensed or registered under this chapter.

(b) The civil penalty authorized by this section is cumulative and in addition to the criminal penalties and injunctive relief provided by this chapter.

§42.076. Criminal Penalties.

(a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who operates a family home without a required listing or registration commits a Class B misdemeanor.

(c) A person who places a public advertisement for an unlicensed facility or an unlisted or unregistered family home commits a Class C misdemeanor.

(d) It is not an offense under this section if a professional provides legal or medical services to:

(1) a parent who identifies the prospective adoptive parent and places the child for adoption without the assistance of the professional; or

(2) a prospective adoptive parent who identifies a parent and receives placement of a child for adoption without assistance of the professional.

§42.0761. Criminal Penalty for Operating Day-Care Center Without Qualified Director.

(a) An owner or operator of a day-care center commits an offense if the owner or operator knowingly operates the day-care center:

(1) without a director who meets the qualifications of a director prescribed by department rules; or

(2) without the routine presence during the day-care center's hours of operation of a director described by Subdivision (1).

(b) An offense under this section is a Class B misdemeanor.

§42.077. Notice of Action Against Facility or Family Home.

(a) If the department revokes or suspends a facility's license or a family home's listing or registration, the department shall publish notice of this action:

(1) in a newspaper of general circulation in the county in which the facility or family home is located; or

(2) on the department's Internet website along with other information regarding child-care services.

(a-1) If notice is published in a newspaper under Subsection (a), the newspaper shall place the notice in the section in which advertisements for day-care services are normally published.

(b) If a person who operates a facility or family home that has had its license, listing, or registration revoked or suspended later applies for a new license, listing, or registration to operate the same facility or family home, the department shall charge the person an application fee set by the executive commissioner by rule in an amount necessary to reimburse the department for the cost of the notice relating to that facility or family home.

(c) The department shall pay for publication of the notice from funds appropriated to the department for licensing and regulating child-care facilities and for listing, registering, and regulating family homes and from appeal and application fees collected under Subsection (b) and appropriated to the department.

(d) A facility or family home that has its license, listing, or registration revoked or suspended shall mail notification of this action by certified mail to the parents or guardian of the child served by the facility or family home. The facility or family home shall mail the notification within five days of the effective date of the revocation or suspension of the license, listing, or registration.

(d-1) If the department determines that the license of a residential child-care facility should be revoked or suspended, the facility shall mail notification of the action or proposed action by certified mail to a parent of each child served by the facility, if the person's parental rights have not been terminated, and to the child's managing conservator, as appropriate. The residential child-care facility shall mail the notification not later than the fifth day after the date the facility is notified of the department's determination that revocation or suspension of the license is appropriate.

(e) When the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in which a family home whose listing or registration has been revoked or suspended is located is of Hispanic origin or Spanish-speaking, the department shall publish the notice under Subsection (a) in both English and Spanish.

§42.078. Administrative Penalty.

(a) The department may impose an administrative sanction or an administrative penalty against a facility or family home licensed, registered, or listed under this chapter that violates this chapter or a rule or order adopted under this chapter. In addition, the department may impose an administrative penalty against a facility or family home or a controlling person of a facility or family home if the facility, family home, or controlling person:

(1) violates a term of a license or registration issued under this chapter;

(2) makes a statement about a material fact that the facility or person knows or should know is false:

(A) on an application for the issuance of a license or registration or an attachment to the application; or

(B) in response to a matter under investigation;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by the facility; or

(B) any part of the premises of the facility;

(4) purposefully interferes with the work of a representative of the department or the enforcement of this chapter; or

(5) fails to pay a penalty assessed under this chapter on or before the date the penalty is due, as determined under this section.

(a-1) Except as provided by Subsection (a-2), nonmonetary, administrative sanctions, including corrective action plans, probation, and evaluation periods, shall be imposed when appropriate before administrative penalties.

(a-2) The department may impose an administrative penalty without first imposing a nonmonetary administrative sanction for violating a minimum standard applicable to a facility or family home under this chapter that is determined by the department to be a high-risk standard, including background check standards, safety hazard standards, and supervision standards.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The penalty for a violation may be in an amount not to exceed the following limits, based on the maximum number of children for whom the facility or family home was authorized to provide care or the number of children under the care of the child-placing agency when the violation occurred:

(1) for violations that occur in a facility other than a residential child-care facility:

Number of children	Maximum amount of penalty
20 or less	$50
21-40	$60
41-60	$70
61-80	$80
81-100	$100
More than 100	$150

(2) for violations that occur in a residential child-care facility:

Number of children	Maximum amount of penalty
20 or less	$100
21-40	$150
41-60	$200
61-80	$250
81-100	$375
More than 100	$500

(c) In addition to the number of children, the amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) Monetary penalties may not be assessed for violations that are the result of clerical errors.

(e) If the department determines that a violation has occurred, the department may issue a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(f) Within 14 days after the date the recommendation is issued, the department shall give written notice of the recommendation to the person owning or operating the facility or family home or to the controlling person, if applicable. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) If the person accepts the determination and recommended penalty of the department or fails to respond to the notice in a timely manner, the department shall issue an order and impose the recommended penalty.

(i) If the person requests a hearing, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and issue a final decision finding that a violation has occurred and imposing a penalty or finding that no violation occurred.

(j) The notice of the administrative law judge's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(k) Within 30 days after the date the administrative law judge's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(l) Within the 30-day period, a person who acts under Subsection (k)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(m) On receipt of a copy of an affidavit under Subsection (l)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(n) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(o) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(p) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(q) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(r) A penalty collected under this section shall be sent to the comptroller for deposit in the general revenue fund.

(s) All proceedings under this section are subject to Chapter 2001, Government Code.

§42.079. Cease and Desist Order.

(a) If it appears to the department that a person who is not licensed, certified, registered, or listed under this chapter is operating a child-care facility or family home, the department, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from operating the facility or home.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Section 42.078.

SUBCHAPTER F. REGULATION OF EMPLOYER-BASED DAY-CARE FACILITIES

§42.151. Definitions.

In this subchapter:

(1) "Employer-based day-care facility" means a day-care facility that is:

(A) operated by a small employer to provide care to not more than 12 children of the employer's employees; and

(B) located on the employer's premises.

(2) "Small employer" means a corporation, partnership, sole proprietorship, or other legal entity that employs fewer than 100 full-time employees.

§42.152. Permit Required.

(a) Except as provided by Subsection (b), a small employer may not operate an employer-based day-care facility unless the employer holds a permit issued by the department under this subchapter.

(b) A small employer is not required to obtain a permit to operate an employer-based day-care facility under this subchapter if the employer holds a license to operate a child-care facility that is issued by the department under Subchapter C. An employer that holds that license must comply with the applicable provisions of Subchapter C, the applicable department rules, and any specific terms of the license.

(c) Notwithstanding any other law, including Section 42.041, a small employer that holds a permit issued under this subchapter is not required to hold a license under Subchapter C to operate an employer-based day-care facility.

§42.153. Application; Initial Inspection and Background and Criminal History Checks.

(a) The department shall develop and implement a streamlined procedure by which a small employer may apply for and be issued a permit to operate an employer-based day-care facility. The employer must submit an application for the permit to the department on a form prescribed by the department.

(b) Except as provided by Section 42.154, on receipt of a small employer's application for a permit, the department shall:

(1) conduct an initial inspection of the employer-based day-care facility to ensure that the employer is able to comply with the provisions of this subchapter and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located; and

(2) conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by Section 42.159(a).

(c) The department may charge an applicant an administrative fee set by the executive commissioner by rule in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

(d) The department shall process an application not later than the 30th day after the date the department receives all of the required information.

§42.154. Conversion of License.

(a) The department shall develop and implement a procedure by which a small employer that holds a license to operate a child-care facility that is issued under Subchapter C before September 1, 2007, may convert the license to a permit under this subchapter. The procedure must include an abbreviated application form for use by the employer in applying for the permit.

(b) The department may waive the requirements under Section 42.153(b) for an initial inspection or background and criminal history checks with respect to a facility operated by a small employer seeking to convert a license to a permit under this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

§42.155. Parent or Guardian Within Immediate Vicinity.

An employer-based day-care facility operating under this subchapter may provide care only for a child whose parent or guardian:

(1) is an employee of the small employer to which the permit to operate the facility was issued;

(2) works within the same building in which the facility is located; and

(3) is away from that building only for limited periods, as defined by department rules, during the hours the child is receiving care.

§42.156. Caregiver-To-Child Ratio.

An employer-based day-care facility operating under this subchapter shall maintain a caregiver-to-child ratio of at least one caregiver to every four children receiving care.

§42.157. Minimum Standards.

The department shall encourage an employer-based day-care facility operating under this subchapter to comply with the minimum standards applicable to a child-care facility licensed under Subchapter C.

§42.158. Caregiver Qualifications.

A caregiver employed by an employer-based day-care facility operating under this subchapter must:

(1) be at least 18 years of age;

(2) have received a high school diploma or its equivalent, as determined by the department;

(3) receive at least the minimum training required for an employee of a licensed day-care center as prescribed by department rules in accordance with Sections 42.042(p) and 42.0421;

(4) have a Child Development Associate or Certified Child-Care Professional credential or an equivalent credential, as determined by the department; and

(5) not have been precluded from providing direct care or having direct access to a child by the department based on the results of a background and criminal history check conducted under Section 42.159.

§42.159. Background and Criminal History Checks Required.

(a) In accordance with rules adopted by the executive commissioner, a small employer shall, when applying for a permit under this subchapter and at least once during each 24 months after receiving that permit, submit to the department for use in conducting background and criminal history checks:

(1) the name of any director of the employer-based day-care facility and the name of each caregiver employed at the facility to provide care to children; and

(2) the name of each person 14 years of age or older who will regularly or frequently be staying or working at the facility while children are being provided care.

(b) The small employer shall also submit to the department for use in conducting background and criminal history checks the name of each prospective caregiver who will provide care to children at the facility or other prospective employee who will have direct access to those children.

(c) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a) or (b), as applicable;

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal

Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(d) For purposes of Sections 411.114 and 411.087, Government Code:

(1) a small employer that applies for a permit is considered an applicant for a license under this chapter; and

(2) an employer-based day-care facility operating under a permit issued under this subchapter is considered a child-care facility licensed under this chapter.

(e) The department shall require the small employer to pay to the department a fee set by the executive commissioner by rule in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

§42.160. Applicability of Other Law.

Except as otherwise provided by this subchapter, an employer-based day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002, and the provisions of this chapter and the department's rules that apply to a child-care facility licensed under Subchapter C do not apply to an employer-based day-care facility.

§42.161. Reporting of Incidents and Violations.

An employer-based day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

§42.162. Authority to Conduct Limited Inspections.

(a) The department may inspect an employer-based day-care facility operating under this subchapter if the department receives a complaint or report of child abuse or neglect alleged to have occurred at the facility.

(b) If the department inspects an employer-based day-care facility as authorized by this section, the department may require the small employer operating the facility to take appropriate corrective action the department determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. The department may continue to inspect the facility until corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) The department may charge a small employer issued a permit under this subchapter a reasonable fee set by the executive commissioner by rule for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

§42.163. Suspension, Denial, or Revocation.

(a) The department may suspend, deny, or revoke a permit issued to a small employer under this subchapter if the employer does not comply with the provisions of this subchapter or any applicable department rules.

(b) The department may refuse to issue a permit under this subchapter to a small employer that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by the department.

(c) An employer-based day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 to the same extent and in the same manner as a licensed child-care facility is subject to that section.

SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES

§42.201. Definitions.

In this subchapter:

(1) "Shelter" means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals and families, including a family violence shelter, a homeless shelter, and an emergency shelter. The term does not include a temporary facility established in response to a natural or other disaster.

(2) "Shelter care" means child care that is provided:

(A) to seven or more children under 14 years of age who temporarily reside at a shelter each with an adult who is related to the child by blood or who is the child's managing conservator;

(B) by a person who is not a temporary resident of a shelter; and

(C) while the adult described by Paragraph (A) is away from the shelter.

(3) "Shelter day-care facility" means a shelter that provides shelter care for not more than 24 hours a day, but at least four hours a day, three or more days a week.

§42.202. Permit Required.

(a) Except as provided by Subsections (b) and (e), a shelter may not provide shelter care unless the shelter holds a permit issued by the department under this subchapter.

(b) A shelter is not required to obtain a permit to provide shelter care under this subchapter if the shelter holds a license to operate a child-care facility that is issued by the department under Subchapter C. A shelter that holds that license must comply with the applicable provisions of Subchapter C, the applicable department rules, and any specific terms of the license.

(c) Notwithstanding any other law, including Section 42.041, a shelter that holds a permit issued under this subchapter is not required to hold a license under Subchapter C to operate a shelter day-care facility.

(d) The department may not issue a permit under this subchapter to a shelter that provides child care to a child who is not a resident of the shelter. A shelter that provides child care described by this subsection must hold a license to operate a child-care facility issued under Subchapter C.

(e) A shelter is not required to obtain a permit under this subchapter or a license under Subchapter C if the shelter provides shelter care for:

(1) less than four hours a day or for less than three days a week; or

(2) six or fewer children.

§42.203. Application; Initial Inspection and Background and Criminal History Checks.

(a) The department shall develop and implement a streamlined procedure by which a shelter may apply for and be issued a permit to operate a shelter day-care facility. The shelter must submit an application for the permit to the department on a form prescribed by the department.

(b) Except as provided by Section 42.204, on receipt of a shelter's application for a permit, the department shall:

(1) conduct an initial inspection of the shelter day-care facility to ensure that the shelter is able to comply with the provisions of this subchapter and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located; and

(2) conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by Section 42.206(a).

(c) The department may charge an applicant an administrative fee set by the executive commissioner by rule in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

(d) The department shall process an application not later than the 30th day after the date the department receives all of the required information.

§42.204. Conversion of License.

(a) The department shall develop and implement a procedure by which a shelter that holds a license to operate a child-care facility that is issued under Subchapter C before September 1, 2012, may convert the license to a permit under this subchapter. The procedure must include an abbreviated application form for use by the shelter in applying for the permit.

(b) The department may waive the requirements under Section 42.203(b) for an initial inspection or background and criminal history checks with respect to a licensed child-care facility seeking to convert a license to a permit under this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

§42.205. Caregiver Qualifications and Training; Child-To-Caregiver Ratios.

(a) The executive commissioner shall adopt rules that specify the minimum:

(1) qualifications and training required for a person providing child care in a shelter day-care facility; and

(2) child-to-caregiver ratios in a shelter day-care facility.

(b) In adopting rules under this section, the executive commissioner shall consider:

(1) the special circumstances and needs of families that seek temporary shelter; and

(2) the role of a shelter in assisting and supporting families in crisis.

§42.206. Background and Criminal History Checks Required.

(a) In accordance with rules adopted by the executive commissioner, a shelter shall, when applying for a permit under this subchapter and at least once during each 24-month period after receiving that permit, submit to the department for use in conducting background and criminal history checks:

(1) the name of any director or prospective director of the shelter day-care facility and the name of each caregiver or prospective caregiver employed at the facility to provide care to children;

(2) the name of each person counted in child-to-caregiver ratios at the shelter day-care facility; and

(3) the name of each person 14 years of age or older who will have unsupervised access to one or more children while in the care of the shelter day-care facility.

(b) In addition to the requirements of Subsection (a), a shelter shall submit a complete set of fingerprints of each person required to undergo a criminal history check under Subsection (a) if:

(1) the person has lived outside the state at any time during the previous five years; or

(2) the shelter has reason to suspect that the person has a criminal history in another state.

(c) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a) or (b), as applicable;

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or another criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(d) For purposes of Sections 411.114 and 411.087, Government Code:

(1) a shelter that applies for a permit is considered to be an applicant for a license under this chapter; and

(2) a shelter day-care facility operating under a permit issued under this subchapter is considered to be a child-care facility licensed under this chapter.

(e) The department shall require the shelter to pay to the department a fee set by the executive commissioner by rule in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

§42.207. Applicability of Other Law.

Except as otherwise provided by this subchapter, a shelter day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002, and the provisions of this chapter and the department's rules that apply to a child-care facility licensed under Subchapter C do not apply to a shelter day-care facility.

§42.208. Reporting of Incidents and Violations.

A shelter day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

§42.209. Authority to Conduct Limited Inspections.

(a) The department may inspect a shelter day-care facility operating under this subchapter if the department receives a complaint or report of child abuse or neglect alleged to have occurred at the shelter day-care facility.

(b) If the department inspects a shelter day-care facility as authorized by this section, the department may require the facility to take appropriate corrective action the department determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. The department may continue to inspect the facility until corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) The department may charge a shelter issued a permit under this subchapter a reasonable fee set by the executive commissioner by rule for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

§42.210. Suspension, Denial, or Revocation.

(a) The department may suspend, deny, or revoke a permit issued to a shelter under this subchapter if the shelter does not comply with the provisions of this subchapter or any applicable department rules.

(b) The department may refuse to issue a permit under this subchapter to a shelter that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by the department.

(c) A shelter day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 to the same extent and in the same manner as a licensed child-care facility is subject to that section.

DEFINITIONS OF "ABUSE" AND "NEGLECT"

Excerpt from the Texas Family Code
Subtitle E. Protection of the Child
Chapter 261. Investigation of Report of Child Abuse or Neglect
Subchapter E. Investigations of Abuse, Neglect, or Exploitation in Certain Facilities

§261.401. AGENCY INVESTIGATION

(a) Notwithstanding Section 261.001, in this section:

(1) "Abuse" means an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.

(2) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

(3) "Neglect" means a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.