

MINIMUM STANDARDS FOR MATERNITY HOMES



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FOR
MATERNITY HOMES

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
LICENSING DIVISION

In This Publication

Through the enactment of House Bill 2292, 78th Legislature, 2003, effective February 1, 2004, the name of the Texas Department of Protective and Regulatory Services (PRS) has been changed to the Texas Department of Family and Protective Services (DFPS). This legislation states that a reference in law to PRS means DFPS.

Most of the minimum standard rules currently cite PRS. Until existing rules have gone through the rule making process for the purpose of changing agency names, the new names will be shown in brackets to indicate that the language in this publication differs from the language in the rule.

Department — Unless otherwise specified, the term “Department” refers to the Texas Department of Family and Protective Services (DFPS).

Facility — The term “facility” refers to a maternity home.

Licensing refers to the Licensing Division of DFPS.

DFPS Rules, 40 TAC refers to the Texas Administrative Code, Title 40, Part XIX, where minimum standards for all regulated facilities are published. Most of the minimum standards for 24-hour child-care facilities are in Chapter 720, Subchapter H, and Chapter 745. These rules are generally quoted word-for-word, though minor edits have been made to fit the style of this publication. Some cross-references to standards are shown in brackets to indicate that we have changed the original rule number reference to the standard number used in this publication.

Standards Clarification Memoranda are letters from Licensing that provide clarification of the minimum standards in this publication. Copies of memos that still are useful have been provided at the back of this publication in order of issuance. Each memo has a unique number based on the year and sequence of issuance (for example, RCCL 98-2 would be the second memo issued in calendar year 1998). In a cross-reference the number will follow either “A&I” (Action and Information) or “RCCL” (Residential Child Care Licensing).

See the Glossary for additional definitions.

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1000 STRUCTURE OF A MATERNITY HOME

1100 Legal Basis for Operation

DFPS Rules, 40 TAC §727.101, effective 7/1/1996

1. The maternity home must be legally established to operate within Texas and comply with all applicable statutes.
2. Along with the application for a license, the maternity home must submit documentation of the legal basis for operation to the Department. See Appendix A.
3. The maternity home must notify the Department of any planned change in the facility's legal basis for operation at least 5 working days before that change is made.
4. The maternity home must report any planned change impacting the conditions of the license to the Department at least 5 working days before that change is made.
5. A maternity home must be licensed as a child-placing agency before engaging in any child-placing activity.

Purpose

Standard 1100.5 protects children from being placed in substitute or adoptive care by persons who do not have the authority to do so.

How to Comply

Maternity homes must not engage in placing activity without a child-placing license. The maternity home must refer any client interested in adoptive placement for her child to a licensed child-placing agency or to DFPS for appropriate referral.

The facility must make sure that all staff and volunteers are aware that they must not act as intermediaries between a birth parent and a prospective adoptive family. They must not introduce these persons to each other or put them in touch with each other by any means.

This also applies to foster care. The maternity home must refer any client interested in placing her child into foster care to a licensed child-placing agency.

1200 Governing Body of the Maternity Home

DFPS Rules, 40 TAC §727.103, effective 7/1/1996

1. The maternity home must have a governing body that is responsible for, and has authority over, the maternity home's policies and activities.
2. The maternity home must submit a written copy of the names, addresses, and titles of the officers or executive committee of the governing body with the application for a license.
3. The maternity home must submit written notice of any change in the composition of the governing body to the Department within 10 working days of such change.
4. The maternity home must inform the Department of any change in the information about governing body officers or executive committee members within 10 working days of learning about such change.
5. The maternity home's policies must clearly state the responsibilities assigned to the governing body.
6. The governing body of the maternity home must carry out the responsibilities assigned in the maternity home's policies.

1300 General Administration

DFPS Rules, 40 TAC §727.105, effective 7/1/1996

1. The maternity home must allow the Department to visit and inspect the facility at all times.
2. The maternity home's records must be available to and open for the Department to review.
3. The maternity home must display the license at the facility.
4. The maternity home must observe the conditions of the license.
5. A maternity home must not offer other types of care in the facility.

Purpose

The intent of Standard 1300.5 is to ensure that the health, safety, and well-being of maternity clients are not jeopardized.

How to Comply

The maternity home must not offer unrelated programs in the maternity-home facility. A multi-service agency may offer other programs on the same campus or in different parts of the same building so long as it is clear that the programs are kept physically separate.

Maternity-home care may include care for the mother and child after delivery, provided the mother is admitted within two weeks of giving birth (Health and Safety Code, Section 249.001, Definitions). Maternity-home care may also include provisions for other minor children of the client.

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6. The maternity home must obtain the written informed consent of a client and the parents or managing conservator of a minor client before involving a client in any fund-raising or publicity for the facility.

1400 Fiscal Accountability

DFPS Rules, 40 TAC §727.107, effective 7/1/1996

1410 General Fiscal Requirements

1. The maternity home must be established and maintained on a sound fiscal basis.

Purpose

Fiscal accountability standards protect the welfare of maternity-home clients. Clients working with the maternity home rely on the facility's services. The maternity home must be financially able to provide the agreed upon services to clients.

How to Comply

In the initial 12-month budget (1420.1), a new maternity home must show projected expenses — by category — and projected income, also by category.

To obtain a license, the maternity home must show that it will be able to meet the expense of providing services. In the initial months of operation, this usually means that the facility must show it has sufficient reserve funds to meet the expenses of providing client care until such time as income can *reasonably* be expected.

On an ongoing basis, the maternity home must be able to demonstrate *at all times* that there are, or will be, sufficient funds to provide complete services for all current clients.

2. The maternity home must maintain complete financial records.

Purpose

The intent of Standard 1410.2 is to ensure that the facility can be evaluated for compliance with fiscal accountability requirements.

How to Comply

A maternity home is **not** required to have an audit by a certified public accountant. DFPS usually reviews financial records only when there is some indication of problems with related standards. DFPS may also review financial records of maternity homes, which are required to have an annual audit.

(continued)

3. The maternity home must have a fee policy that clearly describes what fees are charged and what services are covered by the fees.

Purpose

Standard 1410.3 together with Standard 3120.6d (informing clients before admission about the maternity home's fee policy) ensure that clients are aware of any financial obligations they may be assuming.

How to Comply

Maternity homes may charge fees. Maternity homes are **not** required to charge the same fee to all clients. A "sliding scale" fee schedule that allows the facility to charge less to lower income clients is permitted. The parameters of any differential fee schedules must be specified and equally applied.

If a client plans to place her baby for adoption and the maternity home charges fees, the child-placing agency may pay the maternity-home fees if the client does not have the financial resources. The child-placing agency may not pay maternity-homes fees retroactively — that is, pay fees for care provided before the client also became a client of the child-placing agency (*Minimum Standards for Child-Placing Agencies*, Standard 1332.2).

Maternity homes affiliated with a child-placing agency must use an accounting system that enables income and expenditures of the two programs to be reported separately in order to meet *Minimum Standards for Child-Placing Agencies*.

The prohibition against retroactive payments by a child-placing agency does not apply to medical expenses.

4. A maternity home must not accept any payment for adoption referrals.

1420 Fiscal Requirements for New Maternity Homes

1. New maternity homes must submit a 12-month budget to the Department when the signed application is submitted.
2. New maternity homes must have reserve funds or documentation of available credit at least equal to operating costs for the first three months of operation.
3. New maternity homes must have predictable funds sufficient for the first year of operation.

1500 Maternity Home Policies

DFPS Rules, 40 TAC §727.109, effective 7/1/1996

1. The maternity home must have clearly stated governing body-approved policies that at least meet minimum standards and are fully implemented.
2. The maternity home's policies must include a statement that describes the facility's services. The statement must describe who the maternity home will serve and what services the maternity home will provide.
3. The maternity home must maintain copies of the most recent version of all policies. Policies must indicate governing body approval and effective date. See Appendix B for a listing of required policies.
4. All maternity-home policies must be available for review upon request by the Department and maternity-home clients.
5. The maternity home must operate according to its written policies.
6. The maternity home must report any changes in the written policies to the Department at least 5 working days before implementing the change.

Purpose

The intent of Standard 1500.6 is to ensure that DFPS is notified of policy changes that may impact regulation of the maternity home.

How to Comply

The standard does not require written notice. A telephone call or message will meet the minimum requirement.

The standard refers only to **substantive** changes in policy related to regulation of maternity homes. Usually this will only involve changes in areas such as the admissions policy, governing body responsibilities, or statement of services. If a facility makes policy changes in an area not addressed by minimum standards, this does not need to be reported.

1600 Serious Incident Reports

DFPS Rules, 40 TAC §727.111, effective 12/1/2005

1. The maternity home must complete written reports for serious incidents involving facility staff members or clients within 24 hours of learning about the occurrence. Each report must include the date and time of the occurrence, the staff members or clients involved, the nature of the incident, and the surrounding circumstances.

Purpose

The intent of this standard is to ensure that information about serious incidents is recorded promptly — and completely, before the people involved forget the details. DFPS often needs this information to investigate complaints. This information can be very useful to the maternity home and DFPS when a facility is having problems and finding it difficult to identify the cause.

How to Comply

Ensure that all staff and volunteers understand what constitutes a “serious incident” (see Glossary) and the importance of accurate and complete reporting.

Develop a form for reporting or logging serious incidents. Include all the required elements — date, time, etc. — on the form.

Establish an appropriate location to keep the reports. Maternity-home staff coming on duty in the morning, for example, need to review any reports from the previous evening and night. The administrator needs to review reports right away to see if further action is necessary.

Reports then need to be kept for DFPS to review as part of routine monitoring activity. The maternity home needs to include copies or summaries of reports of serious incidents involving clients in the client’s record. A serious incident may trigger the need for an immediate service plan review. Any other incidents would need to be reviewed as part of any scheduled service plan review.

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2. The maternity home must report the following types of serious incidents (see Appendix C) to the Licensing Division and to a minor client's parent or managing conservator within 24 hours:
 - a. A suicide attempt by a client.
 - b. Abusive treatment, including alleged abuse, and abusive activity among clients.
 - c. Incidents that critically injure or permanently disable a client.
 - d. Serious illness of a client.
 - e. Death of a client.

Purpose

The intent of Standard 1600.2 is to alert DFPS to incidents that may indicate **either** of the following:

- The maternity home is not in compliance with minimum standards.
- There is a threat of standards violation, and the health, safety, and well-being of clients in care may be at risk.

How to Comply

Report any serious incidents that meet the description listed in the standard and described in Appendix C. Maternity homes may make telephone or FAX reports.

If unsure whether an incident meets the definitions, the maternity-home administrator should call DFPS and discuss it.

3. The maternity home must have written policies and procedures to follow when a client is absent without permission. These policies and procedures must include:
 - a. Time frames for determining when a client is absent without permission.
 - b. Actions that maternity-home staff members must take to locate the client.

(continued)

- c. Procedures (including time frames) that staff members must follow to notify the parents or managing conservator of a minor client and the appropriate law enforcement agency.

Purpose.....

The intent of this standard is to ensure that the maternity home takes appropriate steps to ensure the safety of clients.

How to Comply.....

Within reasonable limits, the maternity home is expected to know the whereabouts of **all** clients, adults and minors, at all times. The maternity home may meet this requirement with a “sign out” procedure. DFPS does **not** hold the facility responsible when the client gives false information about where they are going and when they plan to return.

The time frames in sub-item “a” refer to how long the client is “missing” (for example, late returning to the facility from a scheduled absence) before the maternity home begins taking steps to locate her. There may be separate time frames for adults and minors.

The requirements for maternity-home staff action may also differ for adults and minors.

The maternity home is **required** to inform the parents or managing conservator and law enforcement when a minor is not located. The requirement does not apply to adults, but the maternity home may choose to have a policy of notifying an “emergency contact person” designated by the client at admission.

- 4. If a minor client is not located, absence without permission must be reported to the client’s parents or managing conservator and to the appropriate law enforcement agency.
- 5. If a minor client is absent without permission, the circumstances surrounding her absence, efforts to locate the client, and notification of the client’s parents or managing conservator and the appropriate law enforcement agency must be documented. If the parent or managing conservator cannot be located, attempts to report the client’s absence must be documented.
- 6. The maternity home must report disasters or emergencies — such as fires or severe weather — that require any part of the facility in which clients reside to close to the Licensing Division within 24 hours.
- 7. [The maternity home must] report to the Licensing Division within 24 hours after learning of an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

2000 MATERNITY HOME PERSONNEL

2100 Personnel Policies

DFPS Rules, 40 TAC §727.201, effective 7/1/1996

Purpose

The intent of Chapter 2000 is to ensure that persons providing maternity-home care services meet minimum qualifications.

How to Comply

Individuals who are not employees of the facility but who function as staff — including contract employees and student interns — must meet the same requirements as maternity-home staff.

“Function as staff” is defined as having duties and contact with clients similar to those of maternity-home staff. A person who provides a specific type of service to a facility for a limited number of hours per week or month is **not** considered as functioning as staff; for example, a counselor who works with a particular client once a week.

Annual requirements for staff training **do** apply to professional staff. Documentation of current professional license or certification **must** be kept for licensed or certified professional staff who must meet continuing education requirements.

1. The maternity home must have an organization chart showing the administrative structure and staffing, including lines of authority.
2. The maternity home must have a written job description for each employee.
3. If a maternity home uses volunteers, the maternity home must have volunteer policies describing the way volunteers will be used.

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4. If maternity-home volunteers have contact with clients, the maternity home must have written policies covering volunteer qualifications, orientation, and training programs.

Purpose.....

Standards 2100.3-4 are intended to ensure that volunteers are used appropriately by the agency and do not present dangers to clients.

How to Comply

A “volunteer” is a person who provides services to a maternity home without monetary compensation. This includes “sponsoring families.” When a maternity-home client is invited by someone in the community to participate in some kind of “family” activity, this is not considered “volunteer services” and the family is not considered a “sponsoring family.”

A volunteer used as **staff** must meet the same requirements as staff. “Used as staff” is defined as a person carrying out activities required by minimum standards related to, for example, admissions, service planning, or client care.

When a maternity home uses volunteers who are part of another agency or organization that provides screening, training, and supervision, the maternity home is not required to duplicate these services. It is the facility’s responsibility to determine that the volunteer program’s policies and procedures comply with the intent of the standards.

When a volunteer provides short-term services through an organization or agency, the requirements in Standard 2100.4 are **not** applicable. However, the maternity home must be aware of, and approve, the organization’s or agency’s policies on volunteers who have contact with clients.

2200 General Personnel Requirements

DFPS Rules, 40 TAC §727.203, effective 5/1/2000

1. All staff and volunteers having contact with clients must meet the requirements in [Appendix E], Criminal History and Central Registry Background Checks. [The rules in Appendix E supersede what were previously Standards 2200.2 through .3 on this page.]
4. Persons whose behavior or health status present a danger to clients must not be allowed at the maternity home.
5. Before having contact with clients, all staff, volunteers, and family members or other persons residing at the maternity home must be tested for tuberculosis according to the recommendations of the Texas Department of State Health Services or local health authorities.

Purpose.....

The purpose of Standard 2200.5 is to protect the health of clients in maternity homes.

How to Comply.....

The incidence of tuberculosis varies greatly by area and is also heavily influenced by demographic and environmental factors that may vary over time. Public health authorities are in the best position, on a location-by-location basis, to determine when and for whom testing is needed and how often testing should be repeated. Maternity homes are expected to comply with such recommendations in regard to all testing.

When testing is required and the result is positive, the maternity home must follow through with all recommendations for further testing. For example, a positive skin test may require an X-ray examination. If results are positive, all public health precautions and treatment must be carried out in accordance with public health authority recommendations.

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6. The maternity home must have a personnel file for each employee and volunteer whose work relates to maternity-home services. Each file must contain:
 - a. Date of employment.
 - b. Documentation that the person meets the qualifications for the position.
 - c. Tuberculosis test reports, if required, for persons having contact with clients.
 - d. Criminal background check reports.
 - e. Documentation that the person meets training requirements.
 - f. Date and reason for separation, if applicable.

Purpose

The intent of Standard 2200.6 is to provide a record that personnel requirements are met.

How to Comply

- If a maternity home re-employs previously employed staff or volunteers, and the original record containing information on qualifications is still available and relevant, the maternity home may meet the requirement by updating the existing record.
- Otherwise, a new application, resume, or other record documenting the person's qualifications for the position is required.

All other requirements are applied as if the employee had no history with the maternity home.

2300 Personnel Qualifications and Responsibilities

DFPS Rules, 40 TAC §727.205, effective 7/1/1996

2310 Administrative and Service Program Responsibility

1. The maternity home must have an administrator who has overall administrative responsibility for the facility. *[See RCCL 96-3.]*
2. The administrator must:
 - a. Manage the maternity home according to the policies adopted by the governing body.
 - b. Ensure that the maternity home's operation complies with minimum standards.
3. The maternity-home administrator must meet one of the following qualifications:
 - a. A master's or higher degree and at least one year of experience in human services management, supervision, or administration.
 - b. A bachelor's degree and at least two years of experience in management, supervision, or administration, one of which must have been in human services.
 - c. An associate's degree and at least four years of experience in management, supervision, or administration, one of which must have been in human services.
 - d. A high school diploma or G.E.D. certificate and at least six years of experience in management, supervision, or administration, one of which must have been in human services.
4. The maternity home must employ a person who is responsible for the overall services provided by the facility. *[See RCCL 96-3.]*
5. The person responsible for maternity-home services must:
 - a. Approve maternity-home admissions.
 - b. Develop and update service plans for maternity-home clients or approve service plans developed or updated by less qualified staff.
 - c. Provide general program oversight.
6. The person responsible for maternity-home services must have at least a bachelor's degree in a human services field and two years of experience in human services, or a bachelor's degree in any field and at least four years of supervised maternity-home experience.

2320 Other Maternity Home Staff

1. The maternity home must employ sufficient qualified staff to protect the health, safety, and well-being of clients and provide maternity-home services.
2. Staff who provide casework services, including admissions assessment, counseling, placement planning, and discharge planning, must have at least a bachelor's degree and direct supervision from a person who meets the requirements in Standard 2310.6. [See RCCL 96-3.]
3. Other staff working with clients must have at least a high school diploma or G.E.D. certificate.
4. At least one staff must be immediately accessible at the maternity home at all times when clients are present. At least one other staff must be immediately available in case of emergency.

Purpose

While maternity-home clients are relatively independent and not “supervised” in the traditional sense, the intent of this standard is to ensure that maternity-home staff are available at all times.

How to Comply

“Immediately accessible” means at the same physical location as the maternity home. Where the maternity home is part of a larger program or facility, the staff may be in another building.

Additional emergency or on-call staff must be designated. This staff must be able to be at the maternity home within 10 minutes in case of need, and instructions for reaching this person must be located by a telephone at the maternity home. All staff, volunteers, and clients must have information about contacting the emergency or on-call staff.

5. The maternity home must ensure that staff and volunteers are supervised:
 - a. To protect clients’ health, safety and well-being.
 - b. To ensure that assigned duties are performed adequately.

2400 Training Requirements

DFPS Rules, 40 TAC §727.207, effective 7/1/1996

1. The maternity home must have a written training plan or program for all staff. The plan must include stated time frames for assessment of each staff's training needs, training content, and number of training hours required.

Purpose

Research shows that job-related training and education specific to professional requirements is a key indicator of the quality of care provided in human services agencies. The requirement for a written training plan or program is designed to ensure that training is planned and meaningful.

How to Comply

Maternity homes may develop individual training plans or design an overall training program that speaks to the assessment of training needs and to the way in which the facility will meet those needs for staff.

Training plans must include:

- Evaluation time frames — How often will training needs be assessed — annually? Semi-annually?
- Training program — What topics will be addressed in orientation? Annual training?

The training plan must address how the program is related to the needs of the population the maternity home serves and the different roles of staff.

The training plan must also address all minimum standards training requirements applicable to the maternity home.

The plan or program is evaluated at the time of application. Standard 2400.1 may also be evaluated:

- When personnel records are renewed
- When related noncompliance is found
- When there is a complaint or serious incident.

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2. New staff who will work with clients must receive an orientation to the facility's policies and services.

Purpose

Maternity homes are required to operate according to their written policies (Standard 1500.6), and Standard 2400.2 requires staff to be knowledgeable about those policies.

How to Comply

There are no minimum clock-hour requirements for the orientation. Maternity homes are free to choose their own method of conducting or providing orientation. The intent of Standard 2400.1 is *not* to address basic knowledge, skills, and ability, but to ensure that staff are informed of the maternity home's policies.

Orientation does *not* count towards annual training requirements.

3. Client-care staff must successfully complete training from a certified instructor in cardiopulmonary resuscitation (CPR) and first aid before assuming their responsibilities. CPR and first-aid training must be updated as required to maintain certification. CPR and first-aid training must meet criteria established by the Department.

Purpose

First-aid and CPR training is required to increase the likelihood of an appropriate response on the part of client care staff to a life-threatening occurrence.

How to Comply

All staff covered under the requirement in Standard 2320.4 must meet the CPR and first-aid requirements.

4. The maternity-home administrator, the person responsible for the service program, and any staff who provide casework services, including admissions assessment, counseling, placement planning, and discharge planning, must obtain at least 20 clock hours of job-related training annually.

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5. Maternity-home staff working with clients must receive at least 15 hours of training each year related to maternity-home services. Annual training hour requirements are in addition to initial first-aid and CPR training. First-aid and CPR updates may be included in the annual training requirements.

Purpose

Given the importance of training directly related to job responsibilities (2400.1), the purpose of Standards 2400.4-5 is to ensure that maternity-home staff receive annual training appropriate to their position.

How to Comply

Training that focuses on procedures, such as filling out forms correctly, does *not* meet the intent of the standards. This kind of information is “job-related,” but it does not serve to enhance the knowledge, skills, and abilities related to maternity-home responsibilities.

Training documentation must include subject area. Where this area is not obviously related to maternity-home responsibilities, the documentation must show how the subject material is job-related.

6. Persons who hold related professional licenses or credentials that require continuing education will be considered as meeting the training requirements by meeting the requirements to maintain their professional license or credential.

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7. At least 75% of the required annual training must consist of course work from an accredited educational institution, workshops, seminars, or other direct training provided by qualified agencies, organizations and individuals. In-service training and self-instruction programs may be counted in the formal training component if the training includes stated learning objectives, curriculum and learning activities, and an evaluation program.

All training must be documented, including date, subject, number of hours, and training provider.

Purpose

To meet the intent of the standards requiring training, training participants must attend to and comprehend the material presented.

How to Comply

In “direct” training (classes, workshops, seminars, etc.) the leader, trainer, or facilitator interacts with training participants and provides ongoing feedback by answering questions or picking up from facial expressions or body language that clarification or amplification of the material is needed. Direct training, when provided by qualified trainers, includes learning objectives and a curriculum.

“In-service training,” such as staffings, frequently lacks clearly stated learning objectives and a clearly-defined curriculum.

“Self-instruction” type learning ranges from reading a book or listening to or watching a tape to formal programs that include a written test evaluated by an outside party.

To be included in the 75% of required training, the in-service or self-instruction program must be shown to include **all** of the components stated in the standard. The required information on the self-instruction program must be available at the maternity home for DFPS to review.

8. When maternity-home staff complete training in excess of the minimum requirements, up to one-half of the following year’s annual training requirement may be carried over from the previous year.

3000 SERVICE MANAGEMENT

3100 Admission

DFPS Rules, 40 TAC §727.301, effective 7/1/1996

1. The maternity home must have written admission policies and criteria describing the age and type of client served.

Purpose

The intent of Standard 3110.1 is to ensure that maternity homes have admission policies appropriate to the services the facility is able to provide.

How to Comply

The maternity home must carefully consider the special needs of some potential clients and determine if the facility will be able to adequately meet such needs.

For example, the younger the client, the greater the need for supervision. Such clients are also at relatively high risk, medically. When evaluating admission policies, DFPS will compare the age range of potential clients to the maternity home's plan for supervision. The maternity home will need to demonstrate appropriate plans for education and for providing health care for very young clients.

2. The maternity home may only admit clients who meet the admission policies and criteria and for whom the maternity home has an operational program.

(continued)

3. A maternity home whose policies permit the admission of a client whose behavior or history indicates that she may be a danger to herself or others must arrange for the client to be evaluated by a qualified professional. The evaluation may be done by a:
 - a. Psychiatrist
 - b. Psychologist
 - c. Licensed Master Social Worker, Advanced Clinical Practitioner
 - d. Obstetrician/Gynecologist
 - e. Licensed Professional Counselor

Purpose

The intent of standards related to the admission of a client who may be dangerous to herself or to others is to ensure that, if such a client is admitted, the facility has a program to meet her needs.

How to Comply

As a minimum, a prospective client known to have exhibited suicidal behavior or behavior dangerous to others within **30 days before admission** must be evaluated according to these standards. The maternity home determines whether a client's behavior in the more distant past may pose dangers to herself or others.

If a client with no known history of suicidal behavior or behavior dangerous to others exhibits such behavior while a maternity-home client, the standards requirements immediately go into effect.

4. The evaluation of a client who may be a danger to self or others must be done within 72 hours following admission. The evaluation must be documented in the client's record and include:
 - a. An assessment of the potential danger to self or others.
 - b. An assessment of the client's need for care, treatment, and supervision.
 - c. Recommendations for care, treatment, supervision, and further evaluation, if any, if the client is admitted to the maternity home.
5. A maternity home that admits a client who may be a danger to self or others must document precautions, including level of supervision, taken until the professional evaluation is performed and implemented.

(continued)

6. A maternity home that admits a client who may be a danger to self or others must:
 - a. Evaluate the client's needs, as identified in the professional assessment, in relation to the maternity home's admission policy and criteria.
 - b. Evaluate the potential danger to the client or others, as identified in the professional assessment, in relation to the safeguards and services the maternity home can provide.
 - c. Arrange for the client's discharge as soon as possible if the evaluation indicates that the maternity home's program cannot meet her needs or that the maternity home cannot provide necessary safeguards.
7. If the maternity home decides to provide care for a client who may be a danger to self or others, the maternity home must include the professional assessment and recommendations in the client's service plan and ensure that recommendations are followed.

Purpose

The intent of Standards 3110.3-7 is to ensure that a maternity home admitting clients who may be a danger to themselves or others has appropriate safeguards and resources to meet the clients' needs.

How to Comply

The maternity home is required (Standard 3120.1) to complete an admission assessment for each client within 5 working days of admission. It is in everyone's best interest for the maternity home to get as much information as possible about a potential client **before** admission.

If a client presents a potential danger to herself or others, the maternity home will probably learn about the risk during this admission assessment period.

The maternity home is required to either arrange for the client's discharge or initiate the required professional assessment and put precautions in place, including level of supervision, immediately after learning that the client poses a potential risk.

8. Maternity homes that have admission policies, rules for group living, or other requirements that may make the maternity home an inappropriate choice for a prospective client must provide the prospective client with a list of licensed maternity homes so that she can locate a facility that better meets her needs.

3120 Admission Procedures

1. The maternity home must complete an admission assessment, including pregnancy testing, for each client within five working days of admission to determine that the program will be able to meet the client's needs.
2. The admission assessment must be in writing and must include information on each of the following:
 - a. The circumstances that led to the client's referral.
 - b. The client's plan for her baby.
 - c. The client's history:
 - (1) Health history including information about the pregnancy.
 - (2) Educational background and records that may be needed to enroll the client in school or a G.E.D. program.
 - (3) Social history including a description of family situation and relationships, previous placements, and work history.
 - (4) Psychological history (if applicable and available) including any results of testing, evaluation, or assessment.
 - d. A description of any special needs (physical, emotional, intellectual) the client might have.
 - e. The client's expectations of maternity-home placement.
 - f. Level of parent and family involvement with the client during her stay at the maternity home.
3. Clients must have a health examination by a health care provider within 30 days before admission or an examination must be arranged or scheduled within two work days after admission. The arrangement or scheduling must include an assessment by a health care provider to ensure that the client is not in immediate need of medical treatment.
4. Clients must be tested for tuberculosis according to the recommendations of their health care provider.
5. A written placement agreement between the maternity home and the parents or managing conservator of a minor client must be completed at or before placement. A copy of the placement agreement must be in the client's record. The placement agreement must include:
 - a. Authorization for the minor client to reside at the maternity home.
 - b. A medical consent form signed by a person authorized to give consent by the Texas Family Code.

If a minor client has been living independent of her parents or her parents refuse to sign the placement agreement, the minor client may admit herself to the maternity home. This must be documented in the client's record.

(continued)

6. Maternity homes must inform clients and the parents or managing conservators of minor clients, in writing, at or before admission of:
 - a. Rules and guidelines for group living that maternity-home clients will be expected to follow, including visits, gifts, mail, and telephone calls.
 - b. The type and frequency of reports the maternity home will make to parents or managing conservators of minor clients.
 - c. The maternity home's religious policy or program, if any.
 - d. The maternity home's fee policy.

3200 Service Plan

DFPS Rules, 40 TAC §727.303, effective 7/1/1996

1. Within 15 working days of admission, the maternity home must develop a service plan with the client.
2. The service plan must include:
 - a. The client's needs in addition to basic needs for food, clothing, shelter, and routine health care related to the pregnancy, delivery, and postpartum period.
 - b. A specific description of how the maternity home will address any needs of the client in addition to basic needs.
 - c. A specific description of what the maternity home expects of the client in terms of meeting the service plan.

Purpose

The purpose of Standard 3200.2 is to ensure that an appropriate service plan is developed for each client.

How to Comply

The maternity home is expected to cover clients' basic needs (food, clothing, shelter, and routine health care related to the pregnancy) as part of the basic program. Individual service plans do not need to address **basic** needs. If the maternity home does not provide a standard health care program as fully described in the health care policies, then this needs to be covered in individual service plans.

(continued)

3. The service plans for minor clients must address the level of supervision the maternity home will provide for the client.

Purpose

The intent of Standard 3200.3 is to ensure that adequate supervision is provided for minor clients.

How to Comply

The basic standard (2320.4) requires only that a staff member be immediately accessible at all times clients are present. The maternity home is required to assess a minor client's need for more care and supervision prior to admission and have a plan and sufficient qualified staff to carry out that plan if the client is admitted. The client's needs and the way the maternity home will meet those needs must be fully described in the service plan.

4. The maternity home must give a copy or summary of the service plan to the client and the parents or managing conservator of a minor client.
5. The maternity home must carry out the service plan.
6. The maternity home must develop a policy for reviewing plans of service. The policy must state how frequently plans will be reviewed.
7. The maternity home must review the service plan at least as frequently as stated in the home's policy with the client. The review must be in writing and show what has been accomplished in meeting the client's needs, any change in the client's needs, and any change in how the client's needs will be met. The maternity home must give a copy or summary of the service plan review to the client and to the parents or managing conservator of a minor client.

3300 Discharge

DFPS Rules, 40 TAC §727.305, effective 7/1/1996

1. The maternity home must involve the client and the parents or managing conservator of a minor client in discharge planning.
2. The date and circumstances of the client's discharge must be documented in the client's record.
3. Upon discharge, the maternity home must inform clients of how long and where client records will be maintained.

4000 CLIENT SERVICES

4100 Nutrition

DFPS Rules, 40 TAC §727.401, effective 7/1/1996

1. The maternity home must provide food that meets clients' individual nutritional requirements. See Appendix D.
2. The maternity home must make provision for three regularly scheduled meals daily and provide for additional nutrition between meals, mid-morning, afternoon, and evening, as needed and desired by clients.

Purpose

The intent of Standard 4100.2 is to ensure that an adequate, nutritious diet *is available to* maternity-home clients.

How to Comply

The maternity home is required to make provision for meals and snacks. It is understood that the facility is not in a position to ensure that maternity-home clients actually eat a wholesome and nutritious diet.

The phrase "make provision for" is used to allow for differences in food-service programs. In some maternity homes, meals are planned, prepared, and served by maternity-home staff. In other programs, clients plan their own meals, purchase food, and prepare meals within their living unit.

3. The maternity home must provide any special diet prescribed by a client's physician.
4. The maternity home must offer nutritional counseling and guidance to all clients. Content of the counseling and guidance program must meet generally accepted standards in regard to nutrition during pregnancy and lactation.
5. Food preparation, storage, and serving facilities and procedures must meet local health department requirements and recommendations.

4200 Housing

DFPS Rules, 40 TAC §727.403, effective 7/1/1996

4210 Health and Safety

1. Maternity-home buildings must be constructed, maintained, cleaned, and repaired so that there are no hazards to the health and safety of clients.
2. Maternity-home grounds must be established and maintained so that there are no hazards to the health and safety of clients.
3. The maternity home must have approved fire, health, and safety inspections. The maternity home must submit approved inspection reports with the application for the license. The maternity home must obtain approved inspections annually. Inspection reports must be kept on file at the maternity home.
 - a. The maternity home must have an annual fire inspection with a written report by a local or state fire marshal. The maternity home must be in compliance with corrections, conditions, or restrictions specified in the report.
 - b. The maternity home must have an annual sanitation inspection with a written report by a local or state sanitation official. The maternity home must be in compliance with any corrections, restrictions, or conditions stated in the report.
 - c. A maternity home that uses gas must have an annual gas-pipe inspection. The inspection must be documented.
 - d. Liquefied petroleum gas systems must be inspected by an inspector certified by the Liquefied Petroleum Gas Division of the Railroad Commission.
4. The maternity home must have written plans and procedures for assuring the health and safety of clients in case of a disaster or emergency, such as fire or severe weather. Maternity home staff must know these procedures and a copy must be available at the maternity home for the Department to review.
5. The maternity home must have first-aid supplies readily available to maternity-home staff, including a sterile emergency delivery pack, in designated locations.

4220 Living Space

1. The maternity home must provide adequate living space, appropriate furnishings, and bathroom facilities for clients.
2. Bedrooms must have at least 75 square feet of floor space per occupant with a maximum of four clients per bedroom. Bedrooms must have at least one window with outside exposure.
3. Each client must have her own bed and provisions for personal storage space.
4. The maternity home must have at least 40 square feet per client of indoor activity space exclusive of halls, kitchen, bathrooms, and any other space not regularly available to clients. Where bedrooms exceed the minimum square footage requirements, the difference may be counted towards indoor activity space.
5. Bathrooms must be located convenient to client bedrooms.
6. The maternity home must have at least one lavatory and commode for each six clients and one tub or shower for each 10 clients.
7. The maternity home must have food preparation and dining areas appropriate to the food-service program.

4300 Health and Dental Care

DFPS Rules, 40 TAC §727.405, effective 7/1/1996

1. The maternity home must have written policies and procedures for providing routine health care relating to pregnancy and delivery and for emergency diagnosis and treatment of other health and dental problems.
2. The maternity home must ensure that clients have access to prenatal health care, delivery and immediate postpartum health care, and postpartum convalescent health care for the period post delivery and prior to discharge from the maternity home.
3. The maternity home must ensure that each client is informed of the need for a postpartum examination, unless the examination is provided before her discharge from the facility.
4. The maternity home must provide for other emergency health and dental diagnosis and treatment, as needed, when such is ordered by the client's primary health care provider.
5. Maternity-home staff must not provide any medication or treatment to a client except on written orders of a licensed health care provider. If, in an emergency, instructions are given verbally, the health care provider must write and sign orders within 24 hours.
6. A minor client's health care provider must authorize, in writing, a self-medication program or maternity-home staff must administer the minor client's medication.

4400 Other Services

DFPS Rules, 40 TAC §727.407, effective 7/1/1996

1. The maternity home must ensure that counseling about the different options regarding pregnancy is available to clients.

Purpose

The purpose of Standard 4400.1 is to ensure that maternity-home clients are aware of alternatives available to them in making plans for their babies.

How to Comply

“Different options” relate to what the maternity home believes are *acceptable* alternatives. A maternity home is *not*, for example, required to provide information about abortion as an option if the maternity home’s philosophy opposes abortion.

2. The maternity home must ensure that clients have information, training, and counseling available regarding health aspects of pregnancy, preparation for child birth, and recovery from child birth.
3. The maternity home must make provisions for minor clients who have not completed high school or received a G.E.D. to continue their education while in the maternity home.
4. The maternity home must provide a recreational program planned according to the individual needs of the clients.
5. The maternity home must provide transportation for clients’ medical and counseling appointments.
6. The maternity home must ensure that clients have adequate and appropriate clothing.

4500 Client Rights

DFPS Rules, 40 TAC §727.409, effective 7/1/1996

1. Maternity-home clients have the right to initiate their discharge from the maternity home at any time.
2. Maternity-home clients have the right to communicate freely by telephone and mail. The rules and guidelines for group living may establish reasonable rules for long distance calls and telephone hours.
3. Maternity-home policies and practices must not infringe upon the client's right to self-determination, privacy, and personal dignity.
4. Clients must not be subjected to any form of abuse, punishment, humiliation, coercion, or intimidation. A client must not be subjected to any pressure to relinquish her child for adoption or to parent her child.
5. Each client has the right to manage her own money.
6. Clients have the right to receive and send uncensored mail. Any exceptions must be part of the client's individual service plan.
7. Clients have the right to receive visitors. The rules and guidelines for group living may establish reasonable rules for visits. Any exceptions must be part of the client's individual service plan.

4600 Client Records

DFPS Rules, 40 TAC §727.411, effective 7/1/1996

1. The maternity home must keep accurate and current records for each client.
2. Client records must be kept in locked storage in a safe location.
3. Client records must not be released to any agency, organization, or individual without the written consent of the client.
4. Client records and information must be kept confidential. All maternity-home staff and consulting, contracting, and volunteer professionals and others with access to information about the client must be informed, in writing, of their responsibility to maintain client confidentiality.
5. The client record must be retained permanently when the client chooses to relinquish her child for adoption. The maternity home has the option of transferring the record to the licensed child-placing agency that handled the adoption. Records for other clients must be retained for a minimum of two years from the date of discharge.

5000 GLOSSARY

Counseling — A procedure used by professionals in various disciplines for guiding individuals, families, groups, and communities by such activities as giving advice, delineating alternatives, helping to articulate goals, and providing needed information. Counseling must be provided by a person who can demonstrate qualifications appropriate to the services provided.

Human services field — A field of study designed to prepare a student for service in programs and activities that enhance people's development and well-being.

Serious incidents — Any non-routine occurrence that has an impact on the care, supervision, or treatment of a client. This includes, but is not limited to, suicide attempts, injuries requiring medical treatment, serious illness, runaways, commission of a crime, and allegations of abuse or neglect or abusive treatment.

Special needs — Needs other than those of the majority of persons of the same age and stage of development and other than those routinely met by the specific kind of facility where the client receives care.

APPENDIX A

LEGAL BASIS FOR OPERATION

The **governing body** is the legal entity with ultimate authority and responsibility for the maternity home's overall operation. All governing bodies fall under one of the following types:

Sole proprietorship — Personal ownership with the legal right and responsibility to possess, operate, sell, and otherwise deal with the agency. May include an agency owned in common by husband and wife.

Partnership — A combination by contract of two or more people who employ their money, labor, and skill to operate a continuing business, dividing the profits and sharing the losses in an agreed manner. Includes general and limited partnerships.

Corporation — An intangible entity created by individuals in order to operate for profit while limiting individual liability. Organized according to the Texas Business Corporation Act or similar act of another state as evidenced by its Articles of Incorporation.

Non-profit corporation — Equivalent of “not-for-profit corporation.” None of the income is distributed to members, directors, or officers. Organized under the Texas Non-Profit Corporation Act or similar act of another state.

Non profit corporation with religious affiliation — An entity with non-profit corporation status operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Those whose relation with a religious organization is solely for business purposes, such as those who only lease space, are not included.

Association — A combination of individuals and interests of some kind without IRS tax-exempt status. Not organized under the Texas Business Corporation Act.

APPENDIX B REQUIRED MATERNITY HOME DOCUMENTATION

1. Maternity Home Reporting Requirements

What Must be Reported	Standard
Change in Legal Basis for Operation	1100.3
Planned Changes Impacting License Conditions	1100.4
Changes in Composition of the Governing Body	1200.3
Changes in Governing Body Member Information	1200.4
Changes in Required Policies	1500.6
Serious Incident Reporting	1600.2
Absence without Leave — Minor Client	1600.4
Disaster and Emergencies that Close a Living Unit	1600.6
Indictments and Convictions	2200.3

2. Required Maternity Home Application Materials

Materials Submitted with the Initial Application	Standard
Documentation of the Legal Basis for Operation	1100.2
Names, Addresses, and Titles of the Officers or Executive Committee of the Governing Body	1200.2
Policy Stating the Governing Body's Responsibilities	1200.5
Fee Policy	1410.3
Budget for First 12 Months of Operation	1420.1
Documentation of Reserve Funds or Available Credit Equal to First Three Months of Operation	1420.2
Statement of Services to be Provided, Including Who the Home will Serve and the Needs that will be Met	1500.2
Policies and Procedures for Handling Absence without Permission	1600.3
Organization Chart	2100.1
Job Descriptions	2100.2
Volunteer Policies	2100.3, 2100.4

(continued)

Materials Submitted with the Initial Application	Standard
Training Plan or Program	2400.1
Admission Policies and Criteria	3110.1
Rules and Guidelines for Group Living	3120.6a
Service Plan Review Policy	3200.6
Approved Inspections	4210.3
Disaster and Emergency Plans and Procedures	4210.4
Floor Plan with Measurements and Room Use Designated	4220
Policies for Providing Routine Health Care Relating to Pregnancy and Emergency Health and Dental Care	4300.1

3. Maternity Home Client Records

Materials Required in Each Record	Standard
Informed Consent, Fund-Raising or Publicity (if needed)	1300.6
Professional Evaluation (if needed) — Client Whose Behavior or History Indicates Danger to Self or Others	3110.3, 4, 5, 6, and 7
Admission Assessment	3120.2
Placement Agreement for Minor Client	3120.5
Documentation that Required Information was Provided at or Before Admission	3120.6
Individual Service Plan and Updates	3200.1, 3200.7
Documentation that Counseling was Offered on Pregnancy Options, Nutrition, and Health Aspects of Pregnancy	4100.4, 4400.1, 4400.2
Discharge Summary	3300.2, 3300.3

4. Required Maternity Home Records

Records	Standard
Financial Records	1410.2
Record of Board Approval of Policy and Policy Changes	1500.1
Serious Incident Reports	1600.1
Personnel Files	2200.6
Client Records	4600.1

5. Documentation that Must Be Current and Available at the Maternity Home

Documentation	Standard
Legal Basis for Operation	1100.1
Governing Body Composition and Identifying Information	1200.1, 1200.2
Policy: Governing Body Responsibilities	1200.5
Policy: Fees	1410.3
Policy: Statement of Services	1500.2
Records: Serious Incident Reports	1600.1
Policy: Absence without Leave	1600.3
Organization Chart	2100.1
Job Descriptions	2100.2
Policy: Volunteers	2100.3, 2100.4
Records: Personnel Files	2200.6
Training Plan or Program	2400.1
Policy: Admissions Policy	3110.1
Rules and Guidelines for Group Living	3120.6a
Policy: Service Plan Reviews	3200.6
Approved Fire Inspection	4210.3a
Approved Health Inspection	4210.3b
Approved Gas Pipe Inspection	4210.3c
Approved LP Gas System Inspection	4210.3d
Emergency Plans and Procedures	4210.4
Floor Plan (Room Measurements, Room Usage)	4220
Policy: Emergency Health and Dental Care, Routine Pregnancy Care	4300.1
Records: Client Records, Current and Inactive	4600.1, 4600.5

APPENDIX C

SERIOUS INCIDENT REPORTING REQUIREMENTS

The maternity home must report the following types of serious incidents to DFPS and the parents or managing conservator of a minor client by the next workday:

- 1. Abusive Activity Among Clients-in-Care** — Non-consensual sexual activity between clients of any age; consensual sexual activity between clients where there is a significant difference in age, social, emotional, or intellectual development; client-to-client behavior that results in observable physical injury and causes material impairment.
- 2. Abusive Treatment by Caregiver** — Non-accidental caregiver action which, if chronic or intensified, could cause substantial harm to a client. Examples include a slap to the face, sexual verbalizations, exposing the anus, breasts, or any part of the genitals, inappropriate kissing, provision of sexually-oriented material to a client other than that used for appropriate sex education or counseling, touching a client in inappropriate ways, and providing drugs or alcohol to a client.
- 3. Incidents that Result in Critical Injury or Permanent Disability of a Client** — A “critical injury” is defined as any life-threatening injury or one that results in hospital intensive care or the need for life-resuscitation methods. It includes any injury that is deemed “critical” by appropriate medical personnel.
- 4. Serious Illness of a Client** — A “serious illness” is defined as any life-threatening medical condition or one that results in hospital intensive care or the need for life-resuscitation methods. It includes any illness that is deemed “serious” by appropriate medical personnel.
- 5. Suicide Attempt** — Any attempt by a client to take her own life using means or methods capable of causing serious injury or means or methods that the client believes capable of causing serious injury.

APPENDIX D

NUTRITION REQUIREMENTS FOR MATERNITY HOMES

What Counts as One Serving?

Food Group	Equivalent to One Serving
Breads, Cereals, Rice, and Pasta	1 slice of bread ½ cup of cooked rice or pasta ½ cup of cooked cereal 1 ounce of ready-to-eat cereal
Vegetables	½ cup of chopped raw or cooked vegetables 1 cup of leafy raw vegetables
Fruits	1 piece of fruit or melon wedge ¾ cup of juice ½ cup of canned fruit ¼ cup of dried fruit
Milk, Yogurt, and Cheese	1 cup of milk or yogurt 1½ to 2 ounces of cheese
Meat, Poultry, Fish, Dry Beans, Eggs, and Nuts	2½ to 3 ounces of cooked lean meat, poultry or fish Count ½ cup of cooked beans, or 1 egg, or 2 tablespoons of peanut butter as 1 ounce of lean meat (about 1/3 serving)
Fats, Oils, and Sweets	LIMIT CALORIES FROM THESE especially if weight gain is a concern

Major Food Groups and Some Food Choices

Food Group	Number of Servings	Some Food Choices
Breads, Cereals, Rice, and Pasta	6 to 11 servings daily	Whole-grain sliced or pita bread, low-fat crackers, English muffin, bagel, hot or ready-to-eat whole grain cereal, rice, barley, oats, grits, noodles
Vegetables	At least 3 to 5 servings daily	Broccoli, carrots, cauliflower, corn, green peppers, kale, potatoes, spinach, squash, yams
Fruit	At least 2 to 4 servings daily	Apples, bananas, berries, grapefruit, melons, oranges, peaches, pears, plums
Milk, Yogurt, Cheese	At least 3 servings daily	1% or nonfat milk, low-fat or nonfat yogurt, cheese with less than 5 grams of fat per ounce
Meats, Poultry, Fish, Dried Beans and Peas, Eggs, Nuts, Tofu	Up to 6 ounces total of meat, poultry, and/or fish daily	Lean, fat-trimmed meat, such as beef round or sirloin, leg of lamb, extra-lean chopped meat, lean deli roast beef or ham, skinless turkey or chicken; all fish and shellfish, cholesterol-free egg substitutes, navy or pinto beans, chick peas, lentils, tofu, or soy beans

APPENDIX E

CRIMINAL HISTORY AND CENTRAL REGISTRY BACKGROUND CHECKS

§745.11. What words must I know to understand [Chapter 745, Licensing]?

DFPS Rules, 40 TAC, effective 3/1/2002

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

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

Subchapter F, Background Checks

Division 1, Definitions

§745.601. What words must I know to understand [Subchapter F, Background Checks]?

DFPS Rules, 40 TAC, effective 3/1/2002

These words have the following meanings:

- (1) Frequently — More than two times in a 30-day period.
- (2) Regularly — On a scheduled basis.

Division 2, Requesting Background Checks

§745.611. What are background checks?

DFPS Rules, 40 TAC, effective 3/1/2002

Background checks are searches of different databases. There are three types of background checks:

- (1) Criminal history checks conducted by the Department of Public Safety for crimes committed in the state of Texas;
- (2) Criminal history checks conducted by the Federal Bureau of Investigation for crimes committed anywhere in the United States; and
- (3) Central registry checks conducted by [DFPS]. The Central Registry is a database of people who have been found by Child Protective Services, Adult Protective Services, or Licensing to have abused or neglected a child.

§745.613. What is the purpose of background checks?

DFPS Rules, 40 TAC, effective 3/1/2002

These checks are completed to determine whether:

- (1) A person has any criminal or abuse and neglect history; and
- (2) His presence is a risk to the health or safety of children in care.

§745.615. On whom must I request background checks?

DFPS Rules, 40 TAC, effective 3/1/2002

(a) You must request background checks for each person 14 years or older, other than clients of the operation, who will regularly or frequently be present at your operation while children are in care, including:

- (1) Employees, including those you intend to hire;
- (2) Any person(s), including volunteers, who are counted in the child/caregiver ratio;
- (3) Person(s) applying to adopt or foster children through any licensed child-placing agency; and
- (4) Any person under contract with your operation who has unsupervised contact with children in care on a regular or frequent basis.

(b) You must also request background checks for the following:

- (1) The directors, owners, operators, or administrators of the operation;
- (2) Non-client residents of the operation that are 14 years or older; and
- (3) Applicants for a child-care administrator's license.

(c) You do not have to request a background check on professionals who have cleared a background check through another governmental regulatory entity, and you do not employ or contract with the professional.

§745.617. If my operation is located in a large building that includes other businesses or services, must I request a background check on people working in the building who are not involved in my operation?

DFPS Rules, 40 TAC, effective 3/1/2002

You do not have to request a background check unless the individual is regularly or frequently present in the area of the building where the operation is located.

§745.619. For a registered family home that is also a foster home, must I request background checks on foster children who are over 14 years old?

DFPS Rules, 40 TAC, effective 9/16/2003

No. Foster children are considered clients.

§745.621. Must I request background checks on board members of corporations or associations who own or govern the operation?

DFPS Rules, 40 TAC, effective 3/1/2002

No, we do not require a background check unless the individual board member is also an employee or a volunteer who is counted in the child/caregiver ratio and will regularly or frequently be present at your operation while children are in care.

§745.623. How do I request a background check?

DFPS Rules, 40 TAC, effective 3/1/2002

You must verify and send us the following identifying information for every person required to be checked in §745.615 of this title (relating to On whom must I request background checks?), on a signed Licensing form provided by your local Licensing staff:

- (1) Name (last, first, middle), including any maiden or married names or alias;
- (2) Date of birth;
- (3) Sex;
- (4) Social security number;
- (5) Current and previous address; and
- (6) Race (this information does not have to be verified).

§745.625. When do I submit a request for a background check?

DFPS Rules, 40 TAC, effective 3/1/2002

You must submit a request for a background check:

- (1) When you submit your application for a permit to us;
- (2) When you hire a new person, but no later than two business days after the new person is hired or is present in your operation;
- (3) When a non-client resident 14 years old or older lives or moves into your home or operation, or a non-client resident becomes 14 years old;
- (4) When you apply to be a foster or adoptive parent; and
- (5) Every 24 months after each person's name was first submitted.

§745.627. When should I request an FBI criminal history check?

DFPS Rules, 40 TAC, effective 3/1/2002

You should request FBI criminal history checks on persons who live outside of Texas or about whom there is reason to believe other criminal history exists. In these situations you must submit FBI fingerprints cards.

§745.629. How do I submit an FBI fingerprint card for a background check?

DFPS Rules, 40 TAC, effective 3/1/2002

We will provide you with a fingerprint card. The person who will be the subject of the FBI check must then go to his local law enforcement office or DPS office and have his fingerprints taken. Then you send the completed card to your local Licensing office.

§745.631. Must Licensing complete the background check(s) before issuing my permit?

DFPS Rules, 40 TAC, effective 9/16/2003

For registered or listed family homes and independent foster homes and foster group homes, we must receive the results from the background checks before the issuance of a permit. For all other permits, we may issue a permit to an applicant before we receive the results of the background checks.

§745.633. Can a child-placing agency (CPA) verify a foster home, foster group home, or adoptive home prior to receiving the results of the background checks?

DFPS Rules, 40 TAC, effective 3/1/2002

No, a CPA must receive a cleared background check from us before verifying the home.

§745.635. Can I do my own criminal history background checks?

DFPS Rules, 40 TAC, effective 3/1/2002

Yes, but your background checks will not replace those we must conduct. You must still send us all the information required in §745.623 of this title (relating to How do I request a background check?).

Division 3, Criminal Convictions and Central Registry Findings of Child Abuse or Neglect

§745.651. What types of criminal convictions may preclude a person from being present in an operation?

DFPS Rules, 40 TAC, effective 3/1/2002

- (a) A misdemeanor or felony under Title 5 (Offenses Against the Person), Title 6 (Offenses Against the Family), Chapter 29 (Robbery) of Title 7, Chapter 43 (Public Indecency) or §42.072 (Stalking) of Title 9, §15.031 (Criminal Solicitation of a Minor) of Title 4, §38.17 (Failure to Stop or Report Aggravated Sexual Assault of Child) of Title 8 of the Texas Penal Code (TPC), or any like offense under the law of another state or federal law;
- (b) A misdemeanor or felony under the Texas Controlled Substances Act, §46.13 (Making a Firearm Accessible to a Child) or Chapter 49 (Intoxication and Alcoholic Beverage Offenses) of Title 10 of the Texas Penal Code, or any like offense under the law of another state or federal law that the person committed within the past ten years;
- (c) Any other felony under the Texas Penal Code or any like offense under the law of another state or federal law that the person committed within the past ten years; and
- (d) Deferred adjudications covering an offense listed in subsections (a)-(c) of this section, if the person has not completed the probation successfully.

§745.653. If a criminal history check reveals a criminal conviction other than those listed in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?), will Licensing notify me of the results?

DFPS Rules, 40 TAC, effective 3/1/2002

Yes, we will notify you, but you will not be required to take any action.

§745.655. What types of central registry findings may preclude a person from being present in an operation?

DFPS Rules, 40 TAC, effective 3/1/2002

- (a) Any sustained finding of child abuse or neglect, including sexual abuse, physical abuse, emotional abuse, physical neglect, neglectful supervision, or medical neglect. For more information on sustained perpetrators, see Division 5 of this subchapter (relating to Designated and Sustained Perpetrators of Child Abuse or Neglect); and
- (b) Any central registry finding of child abuse or neglect (whether sustained or not), where we have determined the presence of the person in a child-care operation poses an immediate threat or danger to the health and safety of children. For more information on immediate threat, see Division 6 of this subchapter (relating to Immediate Threat or Danger to the Health or Safety of Children).

§745.657. What is the consequence of having one of these types of criminal convictions or central registry findings?

DFPS Rules, 40 TAC, effective 3/1/2002

There are three possible consequences of having either a conviction listed in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?), or a central registry finding listed in §745.655 of this title (relating to What types of central registry findings may preclude a person from being present in an operation?):

- (1) A person is permanently barred and must not be present at an operation while children are in care;
- (2) A person is temporarily barred and may not be present at an operation while children are in care pending the outcome of the administrative review and due process hearing;
- (3) A person must not be present at a child-care operation while children are in care, unless a risk evaluation is approved. See Division 4 of this subchapter (relating to Evaluation of Risk Because of a Criminal Conviction or a Central Registry Finding of Child Abuse or Neglect).

§745.659. What will happen if a person at my child-care operation has a criminal conviction or a central registry finding?

DFPS Rules, 40 TAC, effective 3/1/2002

We will notify the child-care operation in writing:

(1) Of any criminal conviction listed under §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?), and any central registry finding listed in §745.655(a) of this title (relating to What types of central registry findings may preclude a person from being present in an operation?), including whether:

- (A) This conviction or finding permanently bars this person from being present at an operation while children are in care, or whether you may request a risk evaluation for this person; and
- (B) If this person is eligible for a risk evaluation, whether this person may be present at your child-care operation while children are in care pending the outcome of the risk evaluation.

(2) Of any central registry finding listed in §745.655(b) of this title. The notification letter will inform you that this person has not at this time had any due process regarding this matter. However, if we determine that he is an immediate threat or danger to the health or safety of children, you must immediately remove him from contact with children. We will subsequently notify your operation of any future decisions regarding this matter, including whether the person may have contact with children.

§745.661. What must I do after Licensing notifies me that a person at my operation has one of these types of criminal convictions or central registry findings?

DFPS Rules, 40 TAC, effective 3/1/2002

You must take appropriate action, which may include immediately removing this person from your child-care operation while the children are in care, and/or requesting a risk evaluation for this person. Your decision in this matter should be based upon the information provided to you, as specified in §745.659 of this title (relating to What will happen if a person at my child-care operation has a criminal conviction or a central registry finding?).

§745.663. What if the person with the criminal conviction or central registry finding believes the information obtained is incorrect?

DFPS Rules, 40 TAC, effective 3/1/2002

Your responsibilities are the same as noted in §745.661 of this title (relating to What must I do after Licensing notifies me that a person at my operation has one of these types of criminal convictions or central registry findings?). However, you may contact the local Licensing staff who sent the notice letter to discuss the accuracy of the information. For criminal convictions, you may conduct an FBI fingerprint check to determine the accuracy of the conviction.

Division 4, Evaluation of Risk Because of a Criminal Conviction or a Central Registry Finding of Child Abuse or Neglect

§745.681. When may I request a risk evaluation?

DFPS Rules, 40 TAC, effective 3/1/2002

You may request a risk evaluation when:

- (1) We have informed you that the person with the criminal conviction or central registry finding of child abuse or neglect is eligible for a risk evaluation; and
- (2) You believe the person with the criminal conviction or central registry finding (this may be yourself in some situations) does not pose a risk to the health or safety of children.

§745.683. Who is responsible for submitting a request for a risk evaluation?

DFPS Rules, 40 TAC, effective 9/16/2003

- (a) If the person with the criminal conviction or central registry finding is an independent foster home parent or a family home caregiver, then he must request the risk evaluation for himself;
- (b) If the person with the criminal conviction or central registry finding is a child-placing agency foster parent or adoptive parent, then the child-placing agency must request the risk evaluation; and
- (c) For everyone else, the governing body, director, designee, foster home parent, or family home caregiver, as appropriate, must request the risk evaluation.

§745.685. How do I submit a request for a risk evaluation?

DFPS Rules, 40 TAC, effective 3/1/2002

You must obtain a risk evaluation form from your local Licensing office, complete the form, attach the appropriate documentation, and send the form back to your local Licensing office.

§745.687. What must I include in my request for a risk evaluation based on criminal history?

DFPS Rules, 40 TAC, effective 3/1/2002

You must include the following:

- (1) A completed Request for Risk Evaluation Based on Past Criminal History or Central Registry Findings form;
- (2) A valid rationale of why the person does not pose a risk to the health or safety of children;
- (3) A copy of the record of judicial finding or conviction;
- (4) If the individual was incarcerated:
 - (A) A copy of local, state, or federal release order;
 - (B) The date the individual was released from incarceration; and
 - (C) If applicable, the terms and conditions of parole;
- (5) If the person was given a probated sentence, information related to the terms and conditions of the probation;
- (6) The nature and seriousness of the crime for which he was convicted;
- (7) The extent and nature of the person's past criminal history;
- (8) Age of the person when the crime was committed;
- (9) The time that has elapsed since the person's last criminal activity;
- (10) Evidence of rehabilitative effort;
- (11) The conduct and work activities of the person;
- (12) Other evidence of the person's present fitness, including letters of recommendation from the prosecuting attorney, law enforcement, and correctional officers who were involved in the case;
- (13) Documentation showing that the person has maintained a record of steady employment, has supported his children, has maintained a record of good conduct, and has paid any outstanding court costs, fees, fines, and restitution related to the conviction or deferred adjudication; and
- (14) If the person is an employee or volunteer or potential employee or volunteer, information about his anticipated job responsibilities, plans for supervision, and hours and days of service.

§745.689. What must I include in my request for a risk evaluation based on a central registry finding?

DFPS Rules, 40 TAC, effective 3/1/2002

You must include the following:

- (1) A completed Request for Risk Evaluation Based on Past Criminal History or Central Registry Findings form;
- (2) A valid rationale that the person who has a central registry finding does not pose a risk to the health or safety of children;
- (3) The final child abuse or neglect investigation report (Note: If the requester does not have a copy of the record, then the local Licensing staff should include this information in the request.);
- (4) Nature and seriousness of the abuse or neglect finding(s);
- (5) The extent and nature of the person's past abuse or neglect history;
- (6) Age of the person at the time of the abuse or neglect;
- (7) The time that has elapsed since the person's last abuse or neglect activity;
- (8) Evidence that factors which impact the risk of future abuse or neglect have changed;
- (9) Other evidence of the person's present fitness, including letters of recommendation from employers, caseworker, or others who have or have had contact with the person;
- (10) The conduct and work activity of the person;
- (11) Documentation showing that the person has maintained a record of steady employment, has supported his dependents, and has maintained a record of good conduct; and
- (12) If the person is an employee or volunteer or potential employee or volunteer, information related to job responsibilities that would be performed, plans for supervision, and hours and days of service.

§745.691. Will Licensing accept incomplete requests for risk evaluation?

DFPS Rules, 40 TAC, effective 3/1/2002

No. We will return your request if it does not include all of the information listed in §745.687 and §745.689 of this title (relating to What must I include in my request for a risk evaluation based on criminal history? and What must I include in my request for a risk evaluation based on a central registry finding?).

§745.693. In what circumstances can someone with a criminal history be present in a child-care operation?

DFPS Rules, 40 TAC, effective 9/16/2003

(a) The following chart lists the types of criminal convictions that we monitor, whether the person with the conviction is eligible for a risk evaluation, and whether he may be present in a child-care operation while children are in care pending the outcome of the risk evaluation:

Type of Criminal Conviction	Is This Person Eligible for a Risk Evaluation?	If This Person Is Eligible for a Risk Evaluation, May the Person be Present at a Child-Care Operation While Children are in Care Pending the Outcome of the Risk Evaluation?
(1) A felony conviction of an offense under Title 5, Title 6, Chapter 29 of Title 7, Chapter 43 or §42.072 of Title 9, §15.031 of Title 4, or §38.17 of Title 8 of the Texas Penal Code (TPC), or any like offense under the law of another state or federal law.	No, this person is permanently barred from being present at a child-care operation while children are in care.	Not applicable, because this person is not eligible for a risk evaluation.
(2) A misdemeanor conviction of an offense under Title 5, Title 6, Chapter 29 of Title 7, Chapter 43 or §42.072 of Title 9, §15.031 of Title 4, or §38.17 of Title 8 of the TPC, or any like offense under the law of another state or federal law.	No, for listed and registered family homes this person is permanently barred from being present in the family home while children are in care. Yes, for all other types of child-care operations this person is eligible for a risk evaluation.	Not applicable for listed and registered family homes, because this person is not eligible for a risk evaluation. Yes, for all other types of child-care operations, if we previously gave written approval for the person to remain at the operation with the same conviction in question.
(3) A felony or misdemeanor conviction of an offense under the Texas Controlled Substances Act or §46.13 or Chapter 49 of Title 10 of the TPC, or any like offense under the law of another state or federal law that the person committed within the past ten years.	Yes	Yes, if we previously gave written approval for the person to remain in the operation with the same conviction in question.
(4) A felony conviction of an offense under any other title of the TPC, or any like offense under the law of another state or federal law that the person committed within the past ten years.	Yes	Yes, if we previously gave written approval for the person to remain in the operation with the same conviction in question.

(b) We will treat a deferred adjudication the same as a conviction until the probation is successfully completed.

§745.695. In what circumstances can someone with a central registry finding be present in a child-care operation?

DFPS Rules, 40 TAC, effective 3/1/2002

The following chart lists the general types of central registry findings that we can release to you, whether the person with the finding is eligible for a risk evaluation, and whether he may be present in a child-care operation while children are in care pending the outcome of the risk evaluation:

Types of Findings for Child Abuse or Neglect	Is This Person Eligible for a Risk Evaluation?	If This Person Is Eligible for a Risk Evaluation, May the Person be Present at a Child-Care Operation While Children are in Care Pending the Outcome of the Risk Evaluation?
(1) A Sustained Finding of Physical Abuse.	No, this person is permanently barred from being present at a child-care operation while children are in care.	Not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care.
(2) A Sustained Finding of Sexual Abuse.	No, this person is permanently barred from being present at a child-care operation while children are in care.	Not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care.
(3) A Sustained Finding of Emotional Abuse.	Yes	Yes, if we previously approved a risk evaluation for the same finding, the more recent check does not reveal new information about the finding, and the circumstances of the person's contact with children at the operation are the same as when we approved the risk evaluation.
(4) A Sustained Finding of Neglect (including neglectful supervision and medical neglect).	Yes	Yes, if we previously approved a risk evaluation for the same finding, the more recent check does not reveal new information about the finding, and the circumstances of the person's contact with children at the operation are the same as when we approved the risk evaluation.
(5) A Finding, Not Already Sustained, of Any Child Abuse or Neglect Previously Mentioned In This Chart, Where We Have Determined the Presence of the Person In a Child-Care Operation Is an Immediate Threat or Danger to the Health or Safety of Children.	No, this person is temporarily barred from being present at a child-care operation while children are in care.	Not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care. Note: The removal from contact with children is not permanent until the finding is sustained. If the State Office of Administrative Hearings overturns the finding, then there will no longer be a central registry finding, and the person may be present at an operation.

§745.697. Is an approved risk evaluation permanent?

DFPS Rules, 40 TAC, effective 3/1/2002

An operation does not have to request a risk evaluation for the same criminal conviction or central registry finding that a previous background check revealed if:

- (1) We previously approved a risk evaluation for the same finding or criminal conviction;
- (2) The more recent check does not reveal a new finding or criminal conviction; and
- (3) The circumstances of the person's contact with children at the operation are the same as when we approved the risk evaluation.

§745.699. What should I do if a person in my child-care operation is currently the subject of a criminal investigation?

DFPS Rules, 40 TAC, effective 3/1/2002

You must report the investigation to us once there is a criminal indictment for a felony or a criminal information for a misdemeanor.

§745.701. May a person charged with a crime be present in an operation while children are in care?

DFPS Rules, 40 TAC, effective 3/1/2002

We determine on a case-by-case basis whether someone charged with a crime may be present in an operation while children are in care. The person may not be present if a conviction for the charged offense would prohibit him from being at the operation pending the outcome of a risk evaluation, or if we determine that he poses an immediate threat to the health or safety of children.

§745.703. If I have knowledge that a person has a criminal conviction or central-registry finding, can he be present in my operation while children are in care?

DFPS Rules, 40 TAC, effective 3/1/2002

This person may be present in your operation while children are in care if you have requested a background check under §745.613 of this title (relating to What is the purpose of background checks?), and:

- (1) The results do not indicate that he has a criminal conviction or a central-registry finding that may preclude him from being present in an operation while children are in care under §745.651 and §745.655 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation? and What types of central registry findings may preclude a person from being present in an operation?); or
- (2) We have approved a risk evaluation on him.

§745.705. What must I do if a person in my child-care operation is the subject of an abuse or neglect investigation?

DFPS Rules, 40 TAC, effective 3/1/2002

If you have knowledge that Child Protective Services is conducting an investigation, you must report this to us immediately. The person under investigation by us or CPS may have contact with children unless we determine that he poses an immediate threat or danger to the health or safety of children.

§745.707. Who makes the final decision on a risk evaluation?

DFPS Rules, 40 TAC, effective 7/1/2004

The Director of Licensing or his designee reviews the risk evaluation request and determines whether or not a person with a criminal conviction or central registry finding poses a risk to children in a particular operation. If a child day-care operation requests the evaluation, the designee will be a regional director. If a residential operation requests the evaluation, the designee will be a division administrator.

§745.709. What is the basis of the risk evaluation decision?

DFPS Rules, 40 TAC, effective 3/1/2002

We base the risk evaluation decision upon all of the information submitted under §745.687 or §745.689 of this title (relating to What must I include in my request for a risk evaluation based on criminal history? and What must I include in my request for a risk evaluation based on a central registry finding?), the compliance history and regulatory status of the operation, the role and responsibility of the person in his current position, and any federal requirements for adoptive and foster parents regarding criminal convictions.

§745.711. What can I do if I disagree with the risk evaluation decision?

DFPS Rules, 40 TAC, effective 3/1/2002

You have no rights to have a risk evaluation decision reviewed or appealed.

Division 5, Designated and Sustained Perpetrators of Child Abuse or Neglect

§745.731. What are designated perpetrators and sustained perpetrators of child abuse or neglect?

DFPS Rules, 40 TAC, effective 3/1/2002

(a) A designated perpetrator is a person on the [DFPS] central registry found by [DFPS] to have abused or neglected a child, but who has not exhausted his right to an administrative review or due process hearing. See Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

(b) A sustained perpetrator is also a person on the [DFPS] central registry found by [DFPS] to have abused or neglected a child, but who has already been offered his rights to an administrative review and due process hearing, and the:

(1) Designated perpetrator's rights to the administrative review and due process hearing have expired; or

(2) Finding was upheld in the due process hearing.

§745.733. Will Licensing release a central registry finding on a designated perpetrator or sustained perpetrator to my operation?

DFPS Rules, 40 TAC, effective 3/1/2002

(a) In most situations, we will not release the central registry finding for a designated perpetrator until the designated perpetrator's rights to dispute the finding have been completed. However, there are some instances where we may release the central registry finding on a designated perpetrator before his rights to dispute the finding have been completed. We may release the central registry finding to:

(1) Your operation if we determine the presence of the designated perpetrator is an immediate threat or danger to the health or safety of children. In this situation we will also instruct you that this person must be immediately removed from contact with children;

(2) Individuals who have control over the designated perpetrator's access to children, if we determine the presence of the designated perpetrator is an immediate threat or danger to the health or safety of children;

(3) A court for the purpose of justifying a request for appropriate judicial relief; or

(4) Parents of children in care when we determine the information is necessary to meet a child's needs.

(b) We may release the central registry finding for a sustained perpetrator without any further notification from [DFPS] to:

(1) Operations with licensing permits or an application for a permit; and

(2) Individuals who have control over the sustained perpetrator's access to children.

§745.735. What notice will Licensing send a designated perpetrator or a sustained perpetrator working at an operation?

DFPS Rules, 40 TAC, effective 3/1/2002

- (a) We will notify the designated perpetrator:
- (1) Of the abuse or neglect finding;
 - (2) Whether we will release the finding to his employer prior to or after the administrative and/or due process hearing is completed; and
 - (3) Of his rights to an administrative review and due process hearing with instructions on how to request them.
- (b) We will not notify a sustained perpetrator of the central registry finding or of any subsequent release of the finding. We notified him of his rights when we designated him as a perpetrator.

Division 6, Immediate Threat or Danger to the Health or Safety of Children

§745.751. What factors does Licensing consider when determining if a person or an operation is an immediate threat to the health or safety of children?

DFPS Rules, 40 TAC, effective 3/1/2002

We consider the following:

- (1) The severity of the deficiency, including abuse or neglect;
- (2) The circumstances surrounding the deficiency, including abuse or neglect;
- (3) The seriousness of any injuries to children;
- (4) The length of time since the deficiency, including abuse or neglect, occurred;
- (5) Whether the deficiency has been repeated;
- (6) The compliance history of the operation;
- (7) The current regulatory status of the operation;
- (8) How quickly corrections to the deficiency can be made;
- (9) If any corrections have already been made;
- (10) The role of the person in the abuse or neglect;
- (11) The current position, role, and responsibilities of the person; and
- (12) The degree and/or immediacy of the threat or danger.

§745.753. How will I know whether Licensing has determined that a person or my operation poses an immediate threat or danger to the health or safety of children?

DFPS Rules, 40 TAC, effective 3/1/2002

We will notify the person and/or the operation in the original notice of the decision or action that we are taking. The notice will indicate that we have determined the person or the operation poses an immediate threat or danger to the health or safety of children and whether the person may continue to work in their present position or the operation may continue to operate pending the outcome of the administrative review and due process hearing.

APPENDIX F: DFPS MODEL DRUG TESTING POLICY

*DFPS Rules, 40 TAC, Chapter 745, Licensing
Subchapter H, Residential Child-Care Minimum Standards
Division 6, Drug Testing
effective 12/1/2005*

§745.4151. What drug testing policy must my residential child-care operation have?

- (a) The Department of Family and Protective Services is required to adopt a model drug testing policy for residential child-care operations under the Human Resources Code, §42.057. Your residential child-care operation must either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy. Although this policy only covers drugs, coverage of alcohol may be included. The department recommends that an operation obtain legal advice before adopting and implementing any drug testing policy.
- (b) Residential child-care operations must pay for any required drug tests, except as provided in subsection (c)(7) of this section.
- (c) The mandatory criteria for the Model Drug Testing Policy For Residential Child-Care Operations include:
 - (1) Purpose. (Name of residential child-care operation) has a vital interest in ensuring the safety of resident children through the appropriate drug testing of employees, while also protecting the rights of the employees.
 - (2) Scope. This policy applies to all employees of residential child-care operations, including child-placing agencies, that have direct contact with children in care. It also applies to all contract employees that have direct contact with children in care and volunteers that frequently and regularly have direct contact with children. This policy does not apply to foster parents that are verified by child-placing agencies.
 - (3) Definitions. The following definitions apply to this section.
 - (A) Abusing drugs - The use of any:
 - (i) Drug or substance defined by the Texas Controlled Substances Act, Texas Health and Safety Code, Chapter 481; or
 - (ii) Prescription or non-prescription drug that is not being used for the purpose for which it was prescribed or manufactured.
 - (B) Drug testing - The scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens for detecting a drug.

(continued)

- (C) Random drug testing - A testing cycle that varies the frequency and intervals that specimens are collected for testing and selects employees in a random manner that does not eliminate already tested employees from future testing. The testing should ensure all employees are subject to random testing on a continuing basis.
 - (D) Good cause to believe the employee may be abusing drugs - A reasonable belief based on facts sufficient to lead a prudent person to conclude that the employee may be abusing drugs. Sufficient facts may include direct observations of the employee using or possessing drugs, or exhibiting physical symptoms, including but not limited to slurred speech or difficulty in maintaining balance; erratic or marked changes in behavior, including a decrease in the quality or quantity of the employee's productivity, judgment, reasoning, and concentration and psychomotor control, accidents, and deviations from safe working practices; or any other reliable information.
- (4) Mandatory drug testing.
- (A) All applicants that are intended to be hired for employment are subject to pre-employment testing, and may not provide direct care or have access to a child in care until the drug test results are available;
 - (B) All employees are subject to random, unannounced drug testing;
 - (C) Any employee that is the subject of a child abuse or neglect investigation, when DFPS determines there is "good cause to believe the employee may be abusing drugs", must be drug tested within 24 hours of notification by DFPS to the residential child-care operation; and
 - (D) Any employee who is alleged to be abusing drugs must be tested within 24 hours, if there is "good cause to believe the employee may be abusing drugs."
- (5) Drug testing procedures. All drug testing will:
- (A) At a minimum screen for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP);
 - (B) Use one of the following drug-testing methods:
 - (i) A drug test performed by a certified laboratory;
 - (ii) A testing kit with proven rates of false positives below 2% and false negatives below 8% on all drugs screened; or
 - (iii) Another testing method for which there is scientific proof of accuracy comparable to either of the first two choices, such as saliva, hair, or spray drug testing;

(continued)

- (C) Ensure the integrity and identity of the specimen collected from the time of collection to the time of disposal to minimize the opportunity for an employee to adulterate or substitute a specimen; and
 - (D) Preserve the privacy and rights of the person tested. This includes safeguarding the results of any test and maintaining them, so they remain confidential and free from unauthorized access.
- (6) Discipline.
- (A) An applicant or employee's consent to submit to drug testing is required as a condition of employment, and the refusal to consent may result in refusal to hire the applicant and disciplinary action, including discharge, against the employee for a refusal;
 - (B) An employee who is tested because there is "good cause to believe the employee may be abusing drugs," may be suspended pending receipt of written test results and further inquiries that may be required;
 - (C) An employee determined through drug testing to have abused drugs is subject to discipline, up to and including discharge;
 - (D) An applicant for employment or an employee determined through drug testing to have abused drugs may not be employed in a position with direct contact with children in care if the employee presents a risk of harm to children; and
 - (E) An employee determined through drug testing to have abused drugs may be offered the opportunity to complete a rehabilitation program at the employee's expense.
- (7) Appeal. An applicant or employee whose drug test is positive may, at the employee's expense:
- (A) Have an opportunity to explain and offer written documentation why there is another cause for the positive drug test;
 - (B) Request that the remaining portion of the sample that yielded the positive results, if available, be submitted for an additional independent test, including second tests to rule out false positive results; and/or
 - (C) Submit the written test result for an independent medical review.
- (8) Documentation.
- (A) All applicants that you intend to hire for employment and employees must be provided a copy of your drug testing policy and must sign a document consenting to these terms and conditions of employment.
 - (B) All drug test results will be kept for one year after an employee's last work day with the residential child-care operation, or until any investigation involving the person is resolved, whichever is later. The results must be available for review by Licensing Division within 24 hours of the request.

STANDARDS CLARIFICATION
MEMORANDUM SERIES

