

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 745 LICENSING
SUBCHAPTER X EMERGENCY RULES
DIVISION 2 EMERGENCY CHILD CARE OPERATIONS

EMERGENCY RULE ADOPTION PREAMBLE

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 745, Licensing, new Subchapter X, Emergency Rules, Division 2, Emergency Child Care Operation consisting of §§745.10101, concerning emergency rule establishing a new temporary emergency child care permit during the COVID-19 disaster; 745.10103, concerning health and safety standards; 745.10105, concerning safe sleep requirements for infants; 745.10107, concerning background check requirements; 745.10109, concerning additional requirements for an emergency child care operation; and 745.10111, concerning subsequent changes from other authorities, in order to reduce the risk of transmission of COVID-19 and to create a new temporary emergency day care permit, so new operations can begin caring for children of essential service workers. The health, safety, and welfare of children will be at risk without adequate care and supervision. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these Emergency Child Care Operation rules.

To protect the health, safety, and welfare of children in day care operations and the public from the COVID-19 pandemic, HHSC is adopting emergency rules to create a new temporary emergency permit with specific requirements relating to health and safety standards, safe sleep requirements for infants, background check requirements, other general requirements, and how to comply with other subsequent changes from other authorities. The health and safety of children will be at risk without adequate care and supervision.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Human Resources Code §42.001 and §42.042. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Human Resources Code §42.001 states that it is the policy of the state to ensure the protection of all children under care in child-care facilities. In addition, Human Resources Code §42.042 authorizes the Executive Commissioner of HHSC to adopt rules governing the regulation of child care facilities in Chapter 42.

The agency hereby certifies that the emergency rulemaking has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADDITIONAL INFORMATION

For further information, please call: (512) 438-5559.

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§745.10101. Emergency rule establishing a new temporary emergency child care permit during the COVID-19 disaster.

(a) This division establishes a type of emergency child care operation to provide day care for essential service workers, to the extent such services are permitted under Executive Order GA-14, in response to the COVID-19 disaster and does not affect requirements for an operation that already has a permit to care for children under Chapter 42, Texas Human Resources Code.

(b) To obtain a temporary emergency child care permit, an applicant must:

(1) complete an application form located on the Health and Human Services Child Care Licensing website; and

(2) comply with all of the rules in this division.

(c) An applicant is not eligible to apply for a permit under this section if:

(1) the applicant is currently appealing the revocation or denial of a license, listing, registration, or certification under Chapter 42, Human Resources Code; or

(2) Child Care Licensing (Licensing) has denied, revoked, or refused to renew a license, listing, registration, or certification under Chapter 42, Human Resources Code for a substantive reason within the past five years; or

(3) the applicant relinquished a license, listing, registration, or certification in lieu of a revocation, denial, or refusal to renew by Licensing within the past five years.

(d) If Licensing denies a temporary emergency child care permit under this section, that applicant may not operate an emergency child care operation pending due process related to the denial.

(e) A temporary emergency child care permit issued under this section expires 60 days after issuance and may be renewed by Licensing upon completion and submission of a renewal application form.

(f) All initial and renewal permits issued under this section automatically terminate when the expiration or withdrawal of this rule is effective.

(g) The emergency rules in this division will expire pursuant to Section 2001.034 of the Texas Government Code. If the Governor's March 13, 2020 Proclamation of Disaster is terminated before 30 days prior to the expiration of these emergency rules, the emergency rules will be withdrawn with an effective withdrawal date that is 30 days following the termination of the March 13, 2020 Proclamation of Disaster.

§745.10103. Health and safety standards.

In addition to submitting a completed application form, an applicant must submit documentation that demonstrates, in Child Care Licensing's sole discretion, how the operation will comply with the following health and safety standards.

(1) Prevention and control of infectious disease by complying with the current CDC Guidance for Childcare Programs that Remain Open located at: www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html

(2) Prevention of sudden infant death syndrome and use of safe sleep practices, including the safe sleep requirements in §745.10105 of this division (relating to Safe sleep requirements for infants).

(3) If the operation will administer medication, administration of the medication must be:

(A) consistent with standards for parental consent; and

(B) given as stated on the label directions.

(4) Prevention and response to emergencies due to food or an allergic reaction.

(5) Building and physical premises safety, including identification and protection from hazards that can cause bodily injury, bodies of water, and vehicular traffic.

(6) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment.

(7) Emergency preparedness and response planning to ensure the safety of children during an emergency by addressing staff responsibility and operation readiness with respect to emergency evacuation, relocation, and sheltering or lock-down.

(8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.

(9) Appropriate precautions in transporting children.

(10) Pediatric First Aid and CPR.

(11) Recognition and reporting of child abuse, neglect, and exploitation.

§745.10105. Safe sleep requirements for infants.

(a) For a non-walking infant younger than 12 months of age an individual crib or play yard is required. The safe sleep standards relating to a crib or play yard must meet the following requirements:

(1) use a firm, flat mattress that snugly fits the sides of the crib or play yard and not supplement the mattress with additional foam material or pads;

(2) the crib or play yard must be bare, except for a tight-fitting sheet; and

(3) not use bean bags, waterbeds, or foam pads as sleeping equipment.

(b) For infants from birth through 17 months of age, the safe sleep standards must meet the following requirements:

(1) not allow the infant to sleep in a restrictive device;

(2) if the infant is not able to turn over without assistance, a caregiver must place the infant in a face-up sleeping position;

(3) not lay the infant down on any surface at any time while the infant is swaddled; and

(4) not allow the infant's head, face, or crib to be covered by an item such as a blanket, linen, or clothing at any time.

§745.10107. Background check requirements.

An emergency child care operation must meet the background check requirements listed in Subchapter F of this chapter (relating to Background Checks), except that:

(1) an employee who has had a prior fingerprint-based criminal history check with Child Care Licensing will not have to submit new fingerprints to complete the background check; and

(2) if the operation is affiliated with an independent school district, employees who have successfully completed background checks required by the district do not require a background check for employment at the operation.

§745.10109. Additional requirements for an emergency child care operation.

An emergency child care operation must:

(1) designate one person as the "director" to be in charge of the operation, to be responsible for making decisions, and to ensure the health and safety of children in care;

(2) ensure all personnel know who the director is;

(3) require parents to sign in a child upon arrival and include the child's name, birthdate, special care needs or instructions, including any known allergies, how the parent can be reached while the child is in care, and a back-up emergency contact;

(4) record an ID number (driver's license, state identification card, passport, or military ID) from the parent to use for verification at pick-up;

(5) inform the parents of procedures that will apply if they do not pick up their child at the designated time;

(6) provide planned activities to create routine and structure for children in care; and

(7) ensure that the operation has an appropriate number of staff to meet the needs of children who are present, attempt to separate groups of children by age to ensure that the operation can meet the needs of the children in its care, and have additional staff when caring for infants and toddlers to ensure appropriate supervision and to meet their basic needs.

§745.10111. Subsequent changes from other authorities.

If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority that is more restrictive than any of the emergency rules in this division, an operation must comply with the executive order or other direction.