

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER Y. PROVISIONS REGARDING SCHOLARSHIP TO A RELATIVE OF A BOARD MEMBER OF AN INSTITUTION OF HIGHER EDUCATION OR UNIVERSITY SYSTEM

###### 19 TAC §§4.380 - 4.385

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter Y, §§4.380 - 4.385, concerning Provisions Regarding Scholarship to a Relative of a Board Member of an Institution of Higher Education or University System. Specifically, this new section will establish the authority and purpose, definitions, applicability, and substantive requirements relating to mitigating the appearance of favoritism in the offering of certain scholarships at public colleges and universities. The Coordinating Board is authorized to adopt rules regarding this subject by Texas Education Code, §51.969.

The proposed rules are reconstituted from Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter O. Nonsubstantive revisions were made by eliminating unnecessary provisions or definitions, adding citations, and updating rule language for improved clarity.

Rule 4.380, Authority and Purpose, establishes the statutory authority for the subchapter and outlines its purpose. It is the reconstituted and simplified current §21.468.

Rule 4.381, Definitions, establishes definitions for relevant words or phrases used throughout the subchapter. It is the reconstituted §21.469, with definitions removed that are duplicative with §4.3 in the chapter's General Provisions.

Rule 4.382, Applicability, specifies that the rules apply to persons attending any public institution of higher education in Texas. It is the reconstituted and retitled §21.470, with non-substantive revisions to improve clarity.

Rule 4.383, Prohibited Scholarships, establishes the type of applicable scholarships subject to the rules of the subchapter and the circumstances in which an individual may be ineligible for these scholarships. It is the reconstituted §21.471, with nonsubstantive revisions to improve readability.

Rule 4.384, Declaration of Eligibility, outlines the written statement students must file with their institutions prior to receiving a scholarship subject to this subchapter's provisions. It is the reconstituted §21.472.

Rule 4.385, Criminal Penalty, establishes the criminal penalty associated with making a false statement on the Declaration of Eligibility. It is the reconstituted §21.473, with updated citation.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved access to the rules by moving them to a more appropriate location. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Section 51.969, which provides the Coordinating Board with the authority to adopt rules relating to the provisions of that section.

The proposed new section affects Texas Administrative Code, Title 19, Part 1, Chapter 4.

§4.380. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §51.969.

(b) The purpose of these provisions is to provide guidance regarding the awarding of certain scholarships in such a way as to avoid criminal penalties.

§4.381. Definitions.

In addition to the words and terms defined in §4.3 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Affinity--Relationship between individuals based on being married or the fact that the spouse of one of the individuals is related by consanguinity to the other individual. The ending of a marriage ends relationships by affinity unless a child of that marriage is living, in which case the affinity continues as long as a child of that marriage lives. These relationships are named as follows:

(A) First Degree--Spouse, spouse's child, spouse's mother or father, child's spouse, parent's spouse.

(B) Second Degree--Spouse's brother or sister, spouse's grandparent, spouse's grandchild, brother or sister's spouse, grandparent's spouse, grandchild's spouse.

(2) Consanguinity--Relationship between individuals based on being descendants of one another or sharing a common ancestor. An adopted child is considered to be a child of the adoptive parent. These relationships are named as follows:

(A) First Degree--Mother, father, daughter, or son.

(B) Second Degree--Brother, sister, grandparent, or grandchild.

(C) Third Degree--Great-grandparent, great-grandchild, uncle (brother of parent), aunt (sister of parent), nephew (son of brother or sister), or niece (daughter of brother or sister).

(3) Scholarship--An award of gift aid that does not have to be repaid by the student or earned through service or performance.

(4) University System--The association of one or more public senior colleges or universities, medical or dental units or other agencies of higher education under the policy direction of a single governing board, as defined in Texas Education Code, §61.003(10).

(5) Within the Second Degree of Affinity--A circumstance in which a person is a spouse, spouse's child, spouse's mother or father, child's spouse, parent's spouse, spouse's brother or sister, spouse's grandparent, spouse's grandchild, brother or sister's spouse, grandparent's spouse, or grandchild's spouse.

(6) Within the Third Degree by Consanguinity--A circumstance in which a person is a parent, child, brother, sister, grandparent, grandchild, great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual of an individual. An adopted child is considered to be a child of the adoptive parent for this purpose.

§4.382. Applicability.

The rules in this subchapter apply to a person attending any institution of higher education, as defined in §4.3 of this chapter (relating to Definitions), in Texas.

§4.383. Prohibited Scholarships.

A person is not eligible to receive a scholarship originating from and administered by an institution of higher education or university system if the person is related to a current member of the governing board of the institution or system unless:

(1) the scholarship is granted by a private organization or third party not affiliated with the institution of higher education or university system;

(2) the scholarship is awarded exclusively on the basis of prior academic merit;

(3) the scholarship is an athletic scholarship; or

(4) the relationship is not within the third degree by consanguinity or the second degree by affinity, as the terms are defined in §4.381 of this subchapter (relating to Definitions).

§4.384. Declaration of Eligibility.

Prior to receiving a scholarship originating from and administered by an institution of higher education or university system, a student must file a written statement indicating whether the person is related within the third degree by consanguinity or the second degree by affinity to a current member of the governing board of the institution or university system. The required wording of the statement will be developed by the Board and will be made available to institutions via the Coordinating Board's website.

§4.385. Criminal Penalty.

A person commits a Class B misdemeanor offense if the person knowingly files a false statement under §4.384 of this subchapter (relating to Declaration of Eligibility).

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

Filed with the Office of the Secretary of State on January 31, 2025.

TRD-202500352

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 16, 2025

For further information, please call: (512) 427-6365

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**TITLE 26. HEALTH AND HUMAN SERVICES**

**PART 1. HEALTH AND HUMAN SERVICES COMMISSION**

**CHAPTER 745. LICENSING**

**SUBCHAPTER M. ADMINISTRATIVE**

**REVIEWS AND DUE PROCESS HEARINGS**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments

to §745.8801, concerning what is an administrative review; §745.8803, concerning who may request an administrative review; §745.8805, concerning how does a person request an administrative review; §745.8807, concerning how does a person waive the right to an administrative review; §745.8809, concerning who conducts an administrative review; §745.8811, concerning how is an administrative review conducted; §745.8813, concerning what actions may the person conducting the administrative review take at the end of the review; §745.8815, concerning when will the person who conducts the administrative review issue a decision; §745.8835, concerning who may request a due process hearing; and new §745.8802, concerning Requesting Records for an Administrative Review.

## BACKGROUND AND PURPOSE

The purpose of the proposal is to update Texas Administrative Code (TAC), Title 26, Part 1, Chapter 745, Licensing, as it relates to administrative reviews and due process hearings. The proposal will establish guidelines regarding records that an operation or individual requests in relation to an administrative review, including the records that are relevant to different administrative review subjects and the effect of a records request on when a review may occur. The proposal will also address the ability to request an administrative review related to a waiver or variance decision that matches the language in 26 TAC Chapter 745, Subchapter J, Waivers and Variances for Minimum Standards. The proposal will also clarify a person's inability to request an administrative review or due process hearing related to certain subjects and amend certain rule titles from the current question format.

## SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.8801 changes the title from the question format; amends subsection (b) to explain the scope of an administrative review based on a specific decision or action as outlined in new Figure: 26 TAC §745.8801(b); adds subsection (c) to explain the HHSC ability to consider a deficiency for which an operation has requested an administrative review in relation to an enforcement action; and moves the language in current subsection (b) concerning the HHSC inability to finalize a decision or action subject to an administrative review until due process rights related to the decision or action are exhausted and the possible impact on a provider's ability to operate to subsection (d).

Proposed new §745.8802 explains a person's ability to request an investigation report from certain databases in relation to a request for an administrative review; requires that HHSC receive a request under subsection (a) via email or online within a 15-day timeframe; clarifies that HHSC generally may proceed with the administrative review process after producing requested documents; and clarifies circumstances when HHSC will not delay an administrative review due to a records request.

The proposed amendment to §745.8803 changes the title from the question format; adds language concerning an operation's ability to request an administrative review related to the denial, amendment, or revocation of a waiver or variance or disagreement with the original expiration date or conditions in amended Figure: 26 TAC §745.8803(a); clarifies a person's inability to request an administrative review related to a determination that the person poses an immediate threat related to criminal history or findings of child abuse, neglect, or exploitation; and clarifies that an operation cannot request an administrative review to challenge an automatic revocation that occurs because of a change of ownership under Human Resources Code (HRC) §42.048(e).

The proposed amendment to §745.8805 changes the title from the question format and clarifies details regarding requesting an administrative review.

The proposed amendment to §745.8807 changes the title from the question format; amends the title of a reference to §745.8805 to match its proposed new title; and edits capitalization of a reference.

The proposed amendments to §745.8809 and §745.8811 change the title from the question format and update references.

The proposed amendments to §745.8813 and §745.8815 change the title from the question format and updates the title of §745.8811 in a reference. The proposed amendment to §745.8813(c) clarifies if the person who is conducting the administrative review, overturn or alter the decision or action, HHSC will update the records to reflect the change.

The proposed amendment to §745.8835 clarifies a person's inability to request a due process hearing to challenge a determination that the person poses an immediate threat related to criminal history or a finding of child abuse, neglect, or exploitation in amended Figure: 26 TAC §745.8835(a); and clarifies that an operation cannot request a due process hearing to challenge an automatic revocation that occurs because of a change of ownership under HRC §42.048(e).

## FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

## GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new regulation;
- (6) the proposed rules will expand existing regulation;
- (7) the proposed rules will not change the number of individuals subject to the rule; and
- (8) the proposed rules will not affect the state's economy.

## SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

## LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

## PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the rules will be consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because this rule is merely codifying current procedures.

## TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

## PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R025" in the subject line.

## DIVISION 1. ADMINISTRATIVE REVIEWS

**26 TAC §§745.8801 - 745.8803, 745.8805, 745.8807, 745.8809, 745.8811, 745.8813, 745.8815**

### STATUTORY AUTHORITY

The amendments and new section authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendments and new section affect Texas Government Code §531.0055 and HRC §42.042.

*§745.8801. Introduction. [What is an administrative review?]*

(a) An administrative review is an informal review that determines whether a decision or action was appropriate under applicable laws and rules. An administrative review is not a formal hearing and does not involve formal examination and cross-examination of witnesses.

(b) The scope of an administrative review is based on the specific decision or action that is the subject of the review, as described in the following chart. [If you do not waive your right to request an administrative review, we may not finalize any decision or action that

is the subject of the review until you exhaust your due process rights concerning the decision or action. However, you may not be able to operate pending due process for some enforcement actions as provided by Division 3 of this subchapter (relating to Operating Pending and Administrative Review and Due Process Hearing).]  
Figure: 26 TAC §745.8801(b)

(c) If you request an administrative review to challenge a deficiency, we may consider the deficiency when determining whether to impose an enforcement action before the person who conducts the review issues a decision on the deficiency. If the person who conducts the review overturns or alters the deficiency, we will consider that outcome when determining whether to continue with the enforcement action and during an administrative review related to the enforcement action.

(d) If you do not waive your right to request an administrative review, we may not finalize any decision or action that is the subject of the review until you exhaust your due process rights concerning the decision or action. However, you may not be able to operate pending due process for some enforcement actions as provided by Division 3 of this subchapter (relating to Operating Pending an Administrative Review and Due Process Hearing).

*§745.8802. Requesting Records for an Administrative Review.*

(a) Upon notice of a Texas Health and Human Services Commission (HHSC) decision or action for which you may request an administrative review, you may request a copy of an investigation report or administrator licensure records related to the subject of the administrative review from the following databases. This request must be made before we schedule an administrative review if we determine that the investigation report or administrator licensure records are directly related to the decision or action. Request the report or records from the:

(1) Texas Department of Family and Protective Services Information Management Protecting Adults and Children in Texas; and

(2) HHSC Child-Care Licensing Automation Support System.

(b) HHSC must receive the request under subsection (a) of this section via email or by online submission within the timeframe for requesting the administrative review as described in §745.8805 of this division (relating to How to Request an Administrative Review). You must provide verification to HHSC that you made the records request within the 15-day timeframe.

(c) Except as described in subsection (d) of this section, HHSC will proceed with the administrative review process according to timeframes identified in this subchapter after HHSC has produced documents described in subsection (a) of this section.

(d) HHSC will not delay the administrative review process for you to obtain a record if:

(1) The record is not an investigation report or administrator licensure record from a database listed in subsection (a) of this section;

(2) You did not request the record as described in subsection (b) of this section;

(3) We determine that the record is not directly related to the decision or action that is the subject of the administrative review;

(4) You were provided the record prior to your administrative review request; or

(5) The record is related to a deficiency for which you waived the right to an administrative review under §745.8805 of this subchapter or that was upheld prior to the request.

*§745.8803. Administrative Review Requestors. [Who may request an administrative review?]*

(a) The following chart describes who may request an administrative review to dispute a decision or action:

Figure: 26 TAC §745.8803(a)

[Figure: 26 TAC §745.8803(a)]

(b) An owner, partner, governing body, director, licensed administrator, or designee of an operation may not request an administrative review to dispute:

(1) An automatic suspension or revocation of a permit under Texas Human Resources Code (HRC) §§42.048(e), 42.052(j), or 42.054(f) [§42.052(j) or §42.054(f)];

(2) The implementation of a court order against the operation;

(3) An emergency suspension or closure of the operation under HRC §42.073;

(4) A determination that the operation poses an immediate threat or danger to the health or safety of children; [or]

(5) An imposition of an administrative penalty against the operation; or [-]

(6) An allegation against an administrator's license or administrator's license application as listed in §745.9037 of this chapter.

*§745.8805. How to Request an Administrative Review. [does a person request an administrative review?]*

(a) To request an administrative review, a person must submit a written request by regular mail, email, or fax to the name and address indicated in the notification letter or inspection report.

(b) The written request must:

(1) Describe the specific decision or action that the requestor is disputing;

(2) Describe the reasons why the decision or action should not be upheld;

(3) Include any documentation, if applicable, that supports the requestor's position, such as photographs, diagrams, or written and signed statements; and

(4) Be timely.

(c) For a request to be timely:

(1) A mailed request must be postmarked within 15 days after the person receives notification of the right to request an administrative review; or

(2) An emailed or faxed request must be received within the 15 days after the person receives notification of the right to request an administrative review.

(d) When determining whether a request was made timely:

(1) If the notification or inspection report was delivered in person or by email:

(A) Add 15 calendar days to the date the notification or inspection report was delivered; and

(B) Identify the first date after adding the 15 calendar days that is not a Saturday, Sunday, or legal holiday; or

(2) If the notification or inspection report was delivered by regular mail:

(A) Add 18 calendar days to the date the notification or inspection report was mailed (a requestor is presumed to have received the notification or inspection report three days after it was mailed); and

(B) Identify the first date after the 18 calendar days that is not on a Saturday, Sunday, or legal holiday.

*§745.8807. Waiving the Right to an Administrative Review. [How does a person waive the right to an administrative review?]*

(a) A person waives the right to an administrative review by:

(1) Failing to meet the requirements of §745.8805 of this division (relating to How to Request an Administrative Review) [does a person request an administrative review?]; or

(2) Submitting a written statement stating that the person waives the right to the administrative review.

(b) If a person waives the right to an administrative review, the decision or action will be upheld. When applicable, the Texas Health and Human Services Commission will send a notice of the right to a due process hearing as set forth in Division 2 of this subchapter [Subchapter] (relating to Due Process Hearings). If the person does not have a right to a due process hearing, the decision or action will be final.

*§745.8809. Administrative Review Conductors. [Who conducts an administrative review?]*

(a) Administrative Reviews are conducted by Texas Health and Human Services Commission Regulatory Enforcement staff [Child Care Enforcement (Regulatory Enforcement)].

(b) The person conducting an administrative review must not have:

(1) Directly supervised the person making the decision or action or conducting the inspection or investigation that is being reviewed; or

(2) Otherwise, been involved in the original decision, action, inspection, or investigation.

*§745.8811. Conducting an Administrative Review. [How is an administrative review conducted?]*

(a) The person conducting an administrative review may conduct the review by telephone conference, including virtual conferencing, or in a face-to-face meeting at the person's office.

(b) Within 10 calendar days after receiving a request that meets the requirements of §745.8805 of this division (relating to How to Request an Administrative Review) [does a person request an administrative review?], the person conducting the administrative review will contact the requestor to schedule a date and time to conduct the review.

(c) Subject to the limitations in subsection (h) of this section, the telephone conference or meeting must occur within 30 days of the date of the [this] initial contact described in subsection (b) of this section, unless additional time is necessary to complete a records request related to the subject of the administrative review. If additional time is necessary, the 30-day timeframe for completing the conference or meeting will begin when the requestor obtains the records.

(d) The person conducting the administrative review will proceed with the review without conducting the telephone conference or meeting if:

(1) The requestor does not respond to the person's attempts to schedule the conference or meeting within the 30-day timeframe and does not show good cause for the requestor's failure to respond within the timeframe;

(2) The requestor does not schedule the conference or meeting within the 30-day timeframe and does not show good cause for the requestor's failure to schedule the conference or meeting within the timeframe; or

(3) The requestor misses the scheduled conference or meeting without requesting a delay under subsection (e) of this section.

(e) To delay the telephone conference or meeting, the requestor must present a good cause reason for a delay, in writing, to the person conducting the administrative review before the time of the scheduled telephone conference or meeting. The person conducting the review will decide whether good cause exists to delay the conference or meeting.

(f) "Good cause" in this section is a reason for taking an action or failing to take an action that is reasonable and justified when viewed in the context of the surrounding circumstances.

(g) Following the telephone conference or meeting, the person conducting the administrative review will review any documentation the requestor provided, may review any other relevant files, may ask additional questions, and may gather other relevant information, as needed.

(h) When an operation has been cited for the abuse, neglect, or exploitation of a child in care, an administrative review for a deficiency in the following will be postponed while the finding is pending an administrative review before the Texas Department of Family and Protective Services:

(1) A standard related to ensuring that no child is abused, neglected, or exploited while in the care of the operation; or

(2) A standard stating that the child has the right to be free from abuse, neglect, or exploitation.

§745.8813. *Administrative Review Decisions and Actions.* [What actions may the person conducting the administrative review take at the end of the review?]

(a) The person conducting an administrative review may uphold, overturn, or alter the decision or action. The person alters the decision or action by modifying it after assessing the relevant information available at the end of the review. For example, if the disputed decision under review is a minimum standard deficiency, the person conducting the review may determine the deficiency occurred and alter the record by updating the minimum standard to one that better describes the deficiency.

(b) If the telephone conference or meeting did not occur for a reason outlined in §745.8811(d) of this division (relating to Conducting an Administrative Review) [~~How is an administrative review conducted?~~], the person conducting the administrative review will base the decision to uphold, overturn, or alter the decision or action on the written request for a review, any supporting documentation submitted with the request, and any other information that the person gathered.

(c) If the person conducting the administrative review overturns or alters the decision or action, the Texas Health and Human Services Commission (HHSC) will update HHSC records to reflect the change.

(d) If the decision or action is altered, the requestor may not request an additional administrative review concerning the altered decision or action.

(e) If the requestor has the right to request a due process hearing related to the altered decision or action, the altered decision or action will be the subject of the hearing.

(f) If the requestor does not have the right to request a due process hearing, the altered decision or action will be final.

§745.8815. *Timeframe for Administrative Review Decisions.* [When will the person who conducts the administrative review issue a decision?]

(a) The person conducting the administrative review will prepare and send a written decision to the requestor within the following timeframes, unless the person determines good cause exists to extend the relevant timeframe:

(1) Within 21 calendar days of conducting the telephone conference or meeting; or

(2) Within 60 days of the request for an administrative review, if the telephone conference or meeting was not held for a reason outlined in §745.8811(d) of this division (relating to Conducting an Administrative Review) [~~How is an administrative review conducted?~~].

(b) "Good cause" in this section has the same meaning as stated in §745.8811(f) of this division.

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

Filed with the Office of the Secretary of State on January 28, 2025.

TRD-202500295

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: March 16, 2025

For further information, please call: (512) 751-8438



## DIVISION 2. DUE PROCESS HEARINGS

### 26 TAC §745.8835

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Chapter 531 of Texas Government Code. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of HRC.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§745.8835. *Who may request a due process hearing?*

(a) The following chart describes who may request a due process hearing to dispute a decision or action. [:]

Figure: 26 TAC §745.8835(a)

[Figure: 26 TAC §745.8835(a)]

(b) An owner, partner, governing body, director, licensed administrator, or designee of an operation may not request a due process hearing to dispute:

(1) An automatic suspension or revocation of a permit under Texas Human Resources Code (HRC) §§42.048(e), 42.052(j), or 42.054(f) [~~§42.052(j) or §42.054(f)~~];

(2) The implementation of a court order against the operation;

(3) An emergency suspension or closure of the operation under HRC §42.073; or

(4) A determination that the operation poses an immediate threat or danger to the health or safety of children.

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

Filed with the Office of the Secretary of State on January 28, 2025.

TRD-202500296

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Earliest possible date of adoption: March 16, 2025

For further information, please call: (512) 751-8438

