



TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

COMMISSIONER
Anne Heiligenstein

August 7, 2009

Dear Child Care Provider:

The 81st Legislature, Regular Session, concluded on June 1, 2009. A number of bills passed during the session that will impact Child Care Licensing. We have created the following chart to inform you of the new laws and to assist you in complying with new requirements. Please review the chart carefully, as some bills may impact your specific type of program while other bills may not. We have provided a brief summary of each bill, as well as information about complying with the new requirements. Please share information found on this chart with your staff so that they may become knowledgeable of changes to the law and understand how to implement the new requirements.

To assist you in complying, we have attached question and answer tip sheets relevant to some of the changes. You may also choose to copy and distribute them to your staff or to parents of children in care. If you have any questions or need further guidance, please feel free to contact your local licensing office. We look forward to working with you as we implement these new requirements and continue to work toward our common goal of protecting the health, safety and well-being of children in out of home care in Texas.

Sincerely,

Sasha Rasco
Assistant Commissioner, Child Care Licensing

Bill Number	Summary	How To Comply	When To Comply
<p>House Bill 2086</p> <p><i>Gang-Free Zones</i></p> <p><i>This law impacts child care centers only.</i></p>	<p>This law adds §42.064 of the Human Resources Code and designates certain areas around child care centers as 'gang-free zones.' As a result of this new designation, providers at child care centers are now required to inform parents or guardians of children in care about gang-free zones and the consequences of engaging in certain types of criminal activity within these zones.</p> <p>Minimum standard rules related to this law are scheduled to be proposed in October 2009 and once adopted will become effective March 2010.</p>	<p>You should begin informing parents or guardians of children in care about gang-free zones and the consequences of engaging in certain types of criminal activity within these zones. We have developed the attached flyer, entitled "New Requirements for Gang-Free Zones" to assist you in meeting this new requirement. This flyer may be posted at your operation, photocopied and handed out to parents and guardians, or you may choose to incorporate the information into your operational policies.</p>	<p>You should immediately begin sharing information about gang-free zones with parents and guardians of children in care.</p> <p>Licensing staff will be evaluating compliance with the new law and offering technical assistance to operations until the rules become effective.</p>
<p>Senate Bill 95</p> <p><i>Consumer Product Safety - recalled products not accessible to children</i></p> <p><i>This law applies to Licensed Child Care Centers and Registered and Licensed Child care Homes</i></p>	<p>This law prohibits a licensed child-care center, licensed child-care home, or registered child-care home from having or using unsafe children's products that have been recalled by the Consumer Product Safety Commission (CPSC).</p> <p>This law also requires center and home providers to post information about accessing the CPSC list of recalled children's products so that it is accessible for parents.</p> <p>Licensing will be proposing new minimum standard rules in October 2009 and once adopted they will become effective March 2010.</p>	<p>There are several steps you need take in order to comply with this new law that are summarized below. You may also reference the attached flyer entitled "Consumer Product Safety Recalls" for additional guidance.</p> <ol style="list-style-type: none"> 1). You should post information on how to access the recall list through the CPSC website or the Department of Family and Protective Services (DFPS) website. This information should be posted in a publicly accessible and prominent place so parents may learn how to access the information about unsafe children's products. 2). You need to check the CPSC recall list on a regular basis to see if any children's products in your center or home have been recalled. If you discover that recalled items are in use at your program you will need to discontinue using these items and ensure these items will no longer be accessible to children. 	<p>The law will be effective September 1, 2009. However, it is recommended that you access the CPSC website as soon as possible to review the list of recalled items and take appropriate action to ensure the safety of children in your care.</p> <p>Licensing staff will be evaluating compliance with the new law and offering technical assistance until the rules become effective.</p>

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		<p>3). You need to certify in writing, on an annual basis, that all the recalls and notices issued by CPSC have been reviewed and that there are no unsafe children's products in use at your center or home. A sample form is attached.</p>	
<p>House Bill 537</p> <p><i>Transportation requirements for passenger vans and motorcycles</i></p> <p><i>This law applies to Licensed Child Care Centers and Registered and Licensed Child Care Homes</i></p>	<p>This law requires children younger than 17 years of age who ride in a passenger van designed for 15 or fewer people to be in a seat belt or child safety seat. This law also prohibits children under the age of five from being a passenger on a motorcycle, unless the child is riding in a side car.</p> <p>The law goes into effect September 1, 2009.</p>	<p>You should continue to comply with current minimum standard rules regarding transportation including §746.5607 and §747.5407.</p> <p>Children under five years of age may not be transported on a motorcycle unless the child is riding in a side car and secured in a child safety seat or seat belt as currently required by minimum standards.</p>	<p>Centers and homes are already required to comply with the first part of the law.</p> <p>Although Licensing does recognize that motorcycles are not typically the mode of transportation used for children in care, we want you to be informed of all changes to transportation laws involving children. As always, centers and homes are required to comply with all transportation laws, including these changes, which are effective September 1, 2009.</p>
<p>Senate Bill 61</p> <p><i>Child Safety/Booster Seat Requirement</i></p> <p><i>This law applies to Licensed Child Care Centers and Registered and Licensed Child Care Homes</i></p>	<p>This law changes the age in which children must be in a child safety or booster seat to include children under the age of eight, unless the child is taller than 4 feet, 9 inches.</p> <p>Minimum standard rules will be proposed in October 2009 and once adopted will go into effect March 2010.</p>	<p>Check your program's vehicles to ensure they are equipped with the appropriate child safety or booster seats. Child safety and booster seats must be installed and used according to the manufacturer's instructions, including age, weight and height requirements, and the placement in the vehicle.</p> <p>Please see attached flyer "Changes to Transportation Laws that Affect Childcare Providers" for additional assistance in how to comply.</p>	<p>Although Licensing staff will be evaluating compliance with the new law and offering technical assistance until the rules become effective, law enforcement will begin enforcing the law with written or verbal warnings beginning September 1, 2009 when the law takes effect. Beginning June 1, 2010 law enforcement will begin issuing citations.</p>
<p>Senate Bill 572</p> <p><i>Transportation Safety Training Requirements</i></p> <p><i>This law applies to</i></p>	<p>This law requires anyone who transports children chronologically or developmentally under the age of nine to have two hours of annual training on transportation safety. These two hours are in addition to annual training requirements and may not be counted in the 15 or 20 hours of annual training.</p>	<p>All owners, directors, caregivers, and employees who transport children who are chronologically or developmentally under 9 years of age must complete two hours of transportation safety training each year. Documentation of this annual training must be kept in each individual's personnel record.</p>	<p>Transportation safety training received prior to September 1, 2009 and is within the individual's current training year may be counted towards the new requirement. Otherwise the two hours of transportation safety training must be completed by December 31, 2009.</p> <p>Licensing staff will be</p>

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<p><i>Licensed Child Care Centers and Registered and Licensed Child Care Homes</i></p>	<p>Minimum standard rules providing further guidance will be proposed in October 2009.</p>	<p>Please note these two hours of training are in addition to the minimum number of annual training hours already required.</p> <p>Please see attached flyer "Transportation Safety Requirements for Licensed and Registered Child Care Providers" for additional assistance in how to comply.</p>	<p>evaluating compliance with the law and offering technical assistance through December 31, 2009.</p>
<p>Senate Bill 68</p> <p><u>Section 11</u></p> <p><u>Fingerprint Checks</u></p> <p><i>This law applies to Licensed Child Care Centers and Licensed Child Care Homes</i></p>	<p>This change in law clarifies the requirements for allowing direct contact/care of children before submitting a fingerprint check during a staffing shortage. Previously, centers were allowed to proceed without a fingerprint check only to meet minimum standard ratios and no time frames were provided for the submission of the fingerprints. Now, any staffing shortage will allow for direct/care contact while waiting for a fingerprint check IF the name-based check has cleared AND fingerprints are submitted as soon as possible, but no later than 30 days after the earliest date that the person first:</p> <ul style="list-style-type: none"> • provides direct care to a child; • has direct access to a child; <p>or</p> <ul style="list-style-type: none"> • is hired. <p>This includes new directors who are filling vacant director positions.</p>	<p>If your program is experiencing a staffing shortage you may allow an individual to provide direct care or have direct access to children as long as the following apply:</p> <ol style="list-style-type: none"> 1) You have proof and documentation that your operation is experiencing a staff shortage; 2) You have received notification the individual has cleared their DPS and Central Registry check through DFPS; 3) The individual submits his/her fingerprints as soon as possible, but no later than 30 days after the earliest date the person first: <ul style="list-style-type: none"> • provides direct care to a child; • has direct access to a child; or <ul style="list-style-type: none"> • is hired. 4) You have proof verifying the individual submitted his/her fingerprints to L-1 Identity Solutions within the 30 day period. 	<p>Although licensing staff will be providing technical assistance until rules have been proposed and are adopted, effective 9/1/09, you should ensure all persons required to have fingerprint checks submit their fingerprints as soon as possible but no later than 30 days of the earliest date that the person first:</p> <ul style="list-style-type: none"> • Provides direct care to a child; • Has direct access to a child; or • Is hired.
	<p>2). Any person that is required to have a fingerprint-based criminal history check per TAC §745.615 who has already had a fingerprint-based criminal check conducted through an Independent School District (I.S.D.) will not be required to be fingerprinted again provided that:</p> <ul style="list-style-type: none"> • The person's fingerprint-based criminal history clearinghouse record is 	<p>2). Any person at your operation who is required to have a fingerprint-based criminal check per TAC §745.615 that has had a fingerprint check conducted through an Independent School District (I.S.D.) within the previous 24 months will not need to be fingerprinted again provided that:</p> <ul style="list-style-type: none"> • DFPS can verify through the Department of Public 	<p>2). Providers may take advantage of the DPS clearinghouse immediately.</p>

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	<p>accessible to DFPS through the Department of Public Safety; and</p> <ul style="list-style-type: none"> The fingerprint-based criminal history check for the I.S.D. was conducted within the previous 24 months. 	<p>Safety (DPS) that the person has a fingerprint-based criminal history clearinghouse record; and</p> <ul style="list-style-type: none"> The previous fingerprint check was conducted within the previous 24 months. <p>Though the person will not need to be fingerprinted again, you will still be required to submit an FBI check request for the person via the DFPS website or by submitting form 2971.</p> <p>Applicants must notify you or the DFPS Centralized Background Check Unit (CBCU) of the fingerprint check on record with the I.S.D. so that this may be verified through DPS. Applicants and providers should call the CBCU Support Line at 800-645-7549 or send an email to: RCCLFBIRESULTS@dfps.state.tx.us for assistance with this process. You will be asked to provide photo identification via email or fax.</p> <p>For more information regarding the use of the DPS clearinghouse, you may refer to the FAQ that has been posted on the DFPS website at: http://www.dfps.state.tx.us/Child_Care/Information_for_Child_Care_Professionals/fingerprint.asp.</p>	
<p>Senate Bill 68 Section 6</p> <p><i>Family violence, Homeless, and Other Shelters</i></p>	<p>This bill requires that family violence shelters, homeless shelters, and certain other temporary shelters, that provide day care services only to children of residents, be subject to regulation. These programs will have their own operation type similar to that of small employers.</p> <p>Minimum standard rules will be proposed in January 2010 and if adopted will become effective June 2010.</p>	<p>If you do not operate a temporary shelter you do not need to take any actions to comply with this law.</p> <p>If you currently operate a temporary shelter and believe your program may be impacted under this new law, please contact your local licensing office for additional information.</p>	<p>Minimum standard rules will be proposed in January 2010 and if adopted will become effective June 2010.</p>

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<p>Senate Bill 68 <u>Section 3</u></p> <p><i>Exemptions</i></p>	<p>There were a number of changes in the Human Resources Code, Chapter 42, as a result of Senate Bill 68. Some of these changes include adding new definitions for single skills programs, before and after school care and school age care programs and changes in the definition of day care centers.</p> <p>Many of these changes are related to the status of exempt operations.</p> <p>The bill also directs CCL to develop minimum standards that will address the unique type of care provided by before and after school and school age care only programs and temporary shelters providing day care services to its residents.</p> <p>Rule changes will be proposed in 2010. All providers will have an opportunity to review and provide comment on the proposed changes.</p>	<p>Effective September 1, 2009, additional detailed information and frequently asked questions will be available on our website at http://www.dfps.state.tx.us/Child_Care/About_Child_Care_Licensing/</p> <p>You may submit your questions to our email box at msc@dfps.state.tx.us</p>	<p>Although rule development will take place in 2010, many changes will not require implementation until 2011.</p>

New Requirements Regarding Gang-Free Zone Information

For Child Care Centers

As a result of House Bill 2086 that passed during the 81st Legislature, Regular Session, Chapter 42 of the Human Resource Code will be amended to include Section §42.064 requiring that information about gang-free zones be distributed to parents and guardians of children in care at licensed child care centers. The following is a tip sheet to assist in complying with the new law. This information may be posted at your child care operation or copies may be provided to parents.

What is a gang-free zone?

A gang-free zone is a designated area around a specific location where certain gang related activity is prohibited and is subject to increased penalty under Texas law. Specific locations where certain gang related criminal activity is now prohibited include, but are not limited to, public schools, playgrounds, video arcade facilities, and day care centers.

The area that falls within a gang-free zone can vary depending on the type of location. For example, certain gang-related criminal activity that occurs within 300 feet of a video arcade facility is a violation of the new law, whereas certain gang-related criminal activity that occurs within 1000 feet of a school or day care center is a violation of the law.

How do parents know where the gang-free zone ends?

The gang-free zone is within 1000 feet of your child care program. Maps may be produced for the purposes of prosecution and may be updated by the local municipal or county engineer. Parents may contact their local municipality to attempt to obtain a copy of the map if they choose to do so.

Why are gang-free zones needed?

Similar to the motivation behind establishing drug-free zones, the goal of gang-free zones is to deter certain types of criminal activity in areas where children gather by enforcing tougher penalties.

What does this mean for my day care center?

Child care providers are required to inform parents or guardians of children attending their center about the new gang-free zone designation. This means parents or guardians need to be informed that certain gang-related criminal activity or engaging in organized criminal activity within 1000 feet of your program is a violation of this law and is therefore subject to increased penalty.

When do I have to comply with the new requirements?

The law is already in effect and providers should begin sharing information regarding gang-free zones immediately. Licensing staff will be offering technical assistance to facilitate compliance until rules are proposed and adopted, which is estimated to occur in March 2010. In the meantime, providers may want to update their operational policies and procedures to include information mandated by this law.

For further information please contact your licensing representative or your local licensing office.

Consumer Product Safety Recalls

Background

According to the United States Consumer Product Safety Commission (also referred to as CPSC), in 2007, children's products were recalled an average of four times per week, yet recall information is not effectively reaching consumers. When a recall occurs, the commission alerts the media; however no further action is required to ensure that use of the product is discontinued. This means that dangerous children's products can unknowingly end up in homes, childcare facilities, or anywhere children's products are used. The Texas Legislature enacted a new law during the 81st regular session that requires child care providers to regularly check the CPSC recall list and ensure there are no unsafe children's products in the center or home.

What are "children's products"?

Any product designed or intended to be used by a child younger than 13 years of age or used by a caregiver during the care of a child under 13 years. This does not include: clothing or items meant to be swallowed such as medication, drugs, or food.

How do I know if a "children's product" is unsafe?

A children's product is considered to be unsafe if it has been recalled by the CPSC. View a list of current recalls and notices on the CPSC Internet website at www.cpsc.gov.

- You may sign up to receive email notifications from the CPSC by going to <https://www.cpsc.gov/cpsclist.aspx>.
- There are several types of notifications that you may sign up for. Licensing recommends that you sign up for recalls involving infant/child products (list name: child). You may also want to sign up for recalls involving products used for sports and recreation (list name: recreation), particularly if you serve school-age children.

Who is affected?

All licensed child-care centers, licensed child-care homes, and registered child-care homes.

What do I need to do?

- Post information on how to access the CPSC recall list.
 - You will need to post in a prominent and publicly accessible place information on how parents and employees may access a list of unsafe children's products on the CPSC Internet website or through the Department of Family and Protective Services (DFPS) Internet website.
 - You may create and post your own sign that includes the required information or you may download and post the updated "Keeping Children Safe" sign provided by DFPS.
 - The CPSC recalls may be accessed at www.cpsc.gov or www.dfps.state.tx.us.
- Check the CPSC recall list on a regular basis.
- Make sure that there are no recalled children's products in use or accessible to children in your center or home.
 - Recalls are issued as needed and usually there are new recalls posted on a weekly basis.
 - You may want to designate time on a weekly, biweekly or monthly basis to review the recalls and check your program's inventory.
- If you come across a recalled item you will need to remove it from use. The recall notice from CPSC will include information on what to do next, who to contact, and pictures of the items.
- Keep written documentation on file for any recalled product that has been retrofitted as proof that the product is considered safe for use.

Am I required to keep a record that I have checked all recalls?

Yes, at least once each year you will need to document on a form provided by Licensing that you have reviewed each of the bulletins and notices issued by the CPSC and that there are no unsafe products in the center or home. You must keep this form on file at your program for review by Licensing. The form will be available from your Licensing inspector and on the DFPS website.

Can I ever have an unsafe children's product in my home or center?

Only provided that the product is an antique or collectible children's product or is being retrofitted to make it safe and it is not used by or accessible to any child in the center or home.

Children's Products Certification

Name of Child Care Center/Home _____

As of _____ (date)

I certify that all bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products have been reviewed.

I also certify that there are no unsafe children's products in the center or home except for the following:

- A product that is an antique or collectible children's products and is not used by, or accessible to any child
- An unsafe children's product that is being retrofitted to make it safe and the product is not used by, or accessible to any child

Signature

Date Signed

Name of person signing form (please print)

Role at center/home

(Please check appropriate box):

- Permit holder/primary caregiver
- Governing body designee
- Director
- Other _____

Transportation Safety Training Requirements For Licensed and Registered Child Care Providers

The Texas Legislature passed a law during the 81st Legislative Regular Session that requires anyone in a licensed or registered child care program who transports a child whose chronological or developmental age is younger than nine years to complete at least two hours of annual training on transportation safety.

What topics may be included in transportation safety training?

Topics may include:

- Your program's operational policies related to transportation such as:
 - a) Specific equipment and documentation to keep in vehicle
 - b) Emergency procedures
 - c) Communication between program and driver before, during, and after transport
 - d) Pick up and delivery of children
 - e) Maintenance and inspection of vehicles
 - f) Field trip procedures
- Minimum Standard requirements for transportation and field trips
- Supervision of children
- Child passenger safety seat information
- Safety in and around vehicles
- School zones, railroad crossings
- Parking and backing procedures
- Unloading and double-checking vehicles after unloading
- Vehicle specific related safety (i.e. bus, 15 passenger vans)

When must this training be completed?

Current employees, including the director and primary caregiver, who transport children must complete the training by December 31, 2009, and then annually thereafter. Employees hired on or after January 1, 2010, must complete the two hours prior to transporting children and then annually thereafter.

Does this training count towards the annual training requirements?

No, the two hours are in addition to the annual training hours currently required.

How will Licensing verify my training?

Documentation of completed training must be kept in each employee's personnel record and must comply with minimum standard rules. (See §746.1329 for centers or §747.1327 for homes)

Where do I find training resources?

- Texas Cooperative Extension - <http://fcs.tamu.edu/safety/>
- Child Care Group - www.childcaregroup.org
- North Carolina State University - <http://www.safety.ncsu.edu/15passvan/HMTL/index.htm>
- Kids and Cars - www.kidsandcars.org
- Safe Kids USA - www.usa.safekids.org
- Safe Riders - <http://dshs.state.tx.us/saferiders/default.shtm>
- National Highway Transportation Safety Administration - www.nhtsa.gov
- DFPS See and Save - <http://seeandsave.org/>

Can I train my employees?

Yes, you may develop your own training that covers transportation safety using the training requirements outlined in the minimum standard rules (§746.1317 or §747.1315) that includes specifically stated learning objectives, a curriculum, which included experiential or applied activities an evaluation/assessment tool and a certificate of successful completion from the training source.

Changes to the Law Related to Transportation Safety For Childcare Providers

There are several new laws that the Texas Legislature passed during the 81st Legislative Regular Session related to transportation safety going into effect September 1, 2009.

Senate Bill 61 increases the age and height that a child must be before he/she may ride in a seat belt versus a child safety seat or booster seat. As of September 1st children under the age of eight, unless they are at least 4'9" tall must ride in the appropriate child safety or booster seat.

- What does this mean for my program?
 - You will need to check your program's vehicles to make sure they are equipped with the appropriate child safety or booster seats.
 - Remember that child safety and booster seats must be installed and used according to the manufacturer's instructions, including age, weight and height requirements, and the placement in the vehicle.
 - All child passenger safety systems must meet federal standards for crash testing restraint system set by the National Highway Traffic Safety Administration (NHTSA) and must be secured in the vehicles according to the manufacturer's instructions. Please note that if seat belts are added to your vehicle you must maintain documentation that they were installed according to the manufacturer's requirements and meet all applicable NHTSA standards.
- For more information or assistance in meeting the law:
 - National Highway Traffic Safety Administration <http://www.nhtsa.dot.gov/>
 - Texas Department of Public Safety http://www.txdps.state.tx.us/director_staff/public_information/carseat.htm.
 - Fitting stations and installation assistance: <http://www.seatcheck.org/>

Senate Bill 572 requires that any owner or employee of a childcare facility that transports children chronologically or developmentally younger than nine years of age to complete two hours of transportation safety training annually.

- What does this mean for my program?
 - You will need to ensure that all employees who are required to complete this training do so.
 - As with all required training the appropriate documentation must be kept in each employee's personnel record available for review by Licensing.
 - These two hours of training must be completed by December 31, 2009 for all current employees who transport children and then annually thereafter.
- Are there any resources for training or more information?

Please note that DFPS does not approve or endorse any trainers or training sources. The following is provided for information purposes only.

 - Licensed and Registered providers may find additional information in the document entitled "Transportation Safety Training Requirements" on the DFPS website <http://www.dfps.state.tx.us/>
 - Texas Cooperative Extension - <http://fcs.tamu.edu/safety/>.
 - Child Care Group - www.childcaregroup.org
 - North Carolina State University - 15 passenger van safety <http://www.safety.ncsu.edu/15passvan/HTML/index.htm>
 - National Highway Transportation Safety Administration www.nhtsa.gov/ - click on link to Child Safety Seats

- Kids and Cars - www.kidsandcars.org
- Safe Kids USA - www.usa.safekids.org.
- Safe Riders - <http://www.dshs.state.tx.us/saferiders/default.shtm>
- DFPS See and Save - <http://www.seeandsave.org/>

House Bill 537:

1. Requires children younger than 17 years of age in a passenger van designed for 15 or fewer people be in a seat belt or child safety/booster seat.
 2. Prohibits children under the age of five years of age from being a passenger on a motorcycle, unless the child is riding in a side car.
- What does my program need to do?
 - Since all children in care are currently required by minimum standards to be secured in the appropriate child passenger safety seat system (seat belt, child safety or booster seat) there should be no impact to your program as a result of this change in the law.
 - Beginning September 1st make sure that children under five are not allowed to ride on a motorcycle unless in a sidecar.