

# 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 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 47. AUTHORIZED PERSONNEL SUBCHAPTER C. CHRONIC WASTING DISEASE

##### 4 TAC §§47.21 - 47.24

The Texas Animal Health Commission (commission) proposes amendments to §47.21, concerning Definitions, §47.22, concerning General Requirements and Application Procedures, §47.23, concerning Duration and Additional Training Requirements, and §47.24, concerning Grounds for Suspension or Revocation, in Chapter 47, which is entitled "Authorized Personnel". The purpose of the amendments is to establish and clarify requirements for persons authorized to perform certain activities related to Chronic Wasting Disease (CWD).

Section 161.047 of the Texas Agriculture Code requires a person, including a veterinarian, to be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals, which includes Chronic Wasting Disease.

Chapter 47, Subchapter C, which is entitled "Chronic Wasting Disease" includes standards and requirements for persons authorized by the commission to perform work as a Certified CWD Sample Collector. At the time the existing Subchapter C regulations were adopted, the commission only recognized test results from postmortem CWD sample collection. Since this sampling was not performed on live animals, the commission established standards and authorized non-veterinarians to collect postmortem samples.

In early 2016, the commission implemented CWD antemortem testing in certain situations to assess the disease risk and prevalence in herds known to be infected or exposed to CWD. Antemortem testing, because it involves the diagnosis of a disease in live animals, is considered the practice of veterinary medicine pursuant to Chapter 801 of the Occupations Code. As such, the commission proposes to modify the CWD authorized personnel requirements to specify that only Certified CWD Veterinarians may collect antemortem CWD samples.

A Certified CWD Veterinarian is defined as a veterinarian who has authorized personnel status for veterinarians as required by §47.1, has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for antemortem CWD testing, and who has been certified by the commission to per-

form these activities. The proposed rules include requirements regarding the application for authorized personnel status, general standards, duration of status, training, recordkeeping, and suspension or revocation for Certified CWD Veterinarians.

The proposed rules also clarify that non-veterinarians may only collect CWD postmortem samples. As such, the commission proposes to change the title of such individuals from "Certified CWD Sample Collector" to "Certified CWD Postmortem Sample Collector".

##### FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals.

##### PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be uniformity in the state's Chronic Wasting Disease control activities.

##### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

##### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

##### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

##### STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.0417 entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

Pursuant to §161.005 entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.006 entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.0415 entitled "Disposal of Diseased or Exposed Livestock", the commission by order may require the slaughter of livestock, under the direction of the commission, or the sale of livestock for immediate slaughter.

Pursuant to §161.046 entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048 entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054 entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.0541 entitled "Elk Disease Surveillance Program", the commission by rule may establish a disease surveillance program for elk.

Pursuant to §161.101 entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic

livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.112 entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113 entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

No other statutes, articles or codes are affected by the proposal.

#### §47.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Approved Laboratory--A diagnostic laboratory approved by the Administrator to conduct official tests for CWD in accordance with 9 CFR 55.8.

(2) Authorized personnel--For the Chronic Wasting Disease (CWD) program, a person that is certified by the commission as a Certified CWD Postmortem Sample Collector or, for veterinarians, a Certified CWD Veterinarian.

(3) Certified CWD Postmortem Sample Collector--An individual who has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for postmortem CWD testing, and who has been certified by the commission to perform these activities.

(4) Certified CWD Veterinarian--A veterinarian who has authorized personnel status for veterinarians as defined by §47.1 of this title (relating to Definitions), has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for antemortem CWD testing, and who has been certified by the commission to perform these activities.

(5) [(4)] Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy (TSE) of susceptible species.

(6) [(5)] CWD Susceptible Species--All species in the cervidae family determined to be susceptible to CWD, which means any species that has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA/APHIS. This includes white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus columbianus*), North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids.

(7) [(6)] Sample Identification Number--The number assigned to a CWD sample on the specimen submission form.

(8) [(7)] Specimen Submission Form--USDA-APHIS VS form 10-4, electronic VS form 10-4 or equivalent submission form.

#### §47.22. General Requirements and Application Procedures.

(a) This regulation sets the standards for personnel who perform work in the Certified CWD Authorized Personnel [Sample Col-

lector] program pursuant to the Texas Agriculture Code, §161.0417. Personnel may collect samples for official CWD testing in Texas as follows:

(1) Effective September 1, 2015, a person, other than an accredited veterinarian licensed to practice veterinary medicine in Texas, shall be a Certified CWD Postmortem Sample Collector to collect and submit samples for official postmortem CWD testing.

(2) Effective October 15, 2016, an individual shall be a Certified CWD Veterinarian to collect and submit samples for antemortem CWD testing.

(3) [(2)] To become a Certified CWD Sample Collector or a Certified CWD Veterinarian, a person must meet the requirements and apply for Certified CWD Authorized Personnel status [Sample] Collector as prescribed in §47.2 of this title (relating to Requirements and Application Procedures).

(4) [(3)] A person desiring to perform official CWD testing shall participate in a certification program on CWD program requirements and procedures before performing any CWD program functions, including but not limited to review of the disease, proper sample collection techniques, sample preservation and laboratory submission, recordkeeping, and identification of animals.

(b) A Certified CWD Postmortem Sample Collector or Certified CWD Veterinarian shall meet the following requirements:

(1) Comply with §47.4 of this title (relating to Standards for Authorized Personnel);

(2) Comply with §47.5 of this title (relating to Recordkeeping);

(3) Submit CWD samples only to approved laboratories; and

(4) Follow all instructions as prescribed by the commission for collection of samples, including:

(A) collecting the proper samples necessary for CWD detection by an approved laboratory;

(B) labeling of specimen collection containers. The side label of a specimen collection container must include the following information:

(i) date of collection;

(ii) owner name;

(iii) name of the Certified CWD Postmortem Sample Collector or Certified CWD Veterinarian [name];

(iv) species, age and sex of animal;

(v) type of specimen(s);

(vi) herd ID (if applicable), official animal identification number;

(vii) sample identification number;

(C) packaging specimens to meet Federal transportation guidelines; and

(D) fully and accurately completing the specimen submission form, which includes listing the clinical signs of CWD observed in samples collected from CWD susceptible species:

(i) date of collection;

(ii) owner name, address, and phone number;

(iii) [Certified CWD Sample Collector] name, address, phone number, and email address for the Certified CWD Postmortem Sample Collector or Certified CWD Veterinarian;

(iv) species, age, and sex of the animal;

(v) type of specimen(s);

(vi) herd ID (if applicable), all animal identification devices with a quarter-sized piece of tissue (ear, hide, etc.) attached to each device; and

(vii) sample identification number.

§47.23. *Duration and Additional Training Requirements.*

(a) Unless otherwise suspended or revoked, Certified CWD Sample Collector status shall be valid for the period of three years from the date of initial certification.

(b) Unless otherwise suspended or revoked, Certified CWD Veterinarian status shall be valid for the period of three years from the date of initial certification.

(c) [(b)] Certified CWD Postmortem Sample Collector status or Certified CWD Veterinarian status must be renewed by submitting a renewal application to the commission, paying any applicable fees, and meeting any additional requirements determined by commission rule, 30 days prior to the certificate expiration date.

(d) [(e)] In determining whether additional training shall be required of current Certified CWD Postmortem Sample Collectors or Certified CWD Veterinarians before certificate renewal, the commission may consider changes in technology, treatments, procedures, programs, and the performance or competency of the individual in performing CWD program activities.

(e) [(d)] If the commission requires general training or testing for all CWD authorized personnel, the commission will publish notice at least six months in advance of the certificate renewal date.

(f) [(e)] If the commission requires individual training or testing as a result of the CWD authorized personnel's performance or inability to perform CWD program activities, the commission may give notification and set a time and place for training or testing.

§47.24. *Grounds for Suspension or Revocation.*

Suspension or revocation of Certified CWD Postmortem Sample Collector status or Certified CWD Veterinarian status may be made upon a determination that one or more of the following has occurred:

(1) Violating one or more of the provisions prescribed in §47.6 of this title (relating to Grounds for Suspension or Revocation);

(2) Failing to comply with one or more of the provisions prescribed in §47.4 of this title (relating to Standards for Authorized Personnel);

(3) Observing clinical signs or lesions of CWD and failing to immediately report those findings to the commission; or

(4) Failing to complete additional training or testing as prescribed in §47.23 of this title (relating to Duration and Additional Training Requirements).

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 May 27, 2016.

TRD-201602711



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

##### SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

###### 10 TAC §5.802

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program.

The purpose of the amendments to 10 TAC §5.802 is to remove definitions, eligibility criteria, the application process, and requirements relating to procuring new Local Operators because the Department is no longer utilizing new Local Operators, and clarifies the responsibilities and eligibility criteria and performance requirements for Local Operators.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be clarity of program requirements and programmatic adherence to federal guidelines. There will not be any economic cost to any individuals required to comply with the amendments.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held June 6, 2016, to July 6, 2016, to receive input on the proposed amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us), or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. July 6, 2016.

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The proposed amendments affect no other code, article, or statute.

§5.802. *Local Operators for the Section 8 Housing Choice Voucher Program.*

(a) Purpose. This chapter clarifies the performance responsibilities [roles] and duties of the Local Operators [(LO)] for Housing Choice Vouchers [(Section 8)] administered by the Texas Department of Housing and Community Affairs [(the Department)]; identifies a process for potential expansion of the Department's Housing Choice Voucher program to additional areas of the state; and outlines the procedures for the Department to [procure new LOs and] renew existing LOs.

(b) Definitions.

[(1) Applicant--A Person who has submitted an Application for Department funds or other assistance.]

[(2) Application--A request for funds submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material.]

[(3) Application Acceptance Period--The period of time that Applications may be submitted to the Department as more fully described in the applicable Notice of Funding Availability (NOFA).]

[(4) Application Deficiency--A deficiency or inconsistency, which in the Department's reasonable judgment, may be cured by supplemental information or explanation that will not necessitate a substantial reassessment or re-evaluation of the Application.]

(1) [(5)] Board--The governing board of the Texas Department of Housing and Community Affairs.

(2) [(6)] Contract--The executed written agreement between the Department and a Local Operator [an Administrator] performing an activity related to a program that outlines performance requirements and responsibilities as identified in [assigned by] the document.

(3) [(7)] Department--The Texas Department of Housing and Community Affairs.

(4) Housing Quality Standards--(HQS) are minimum standards for tenant-based programs and are required both at initial occupancy and during the term of the lease. HQS standards apply to the building and premises, as well as to the unit.

[(8) Effective Date--The date on which all applicable parties have signed a Contract.]

[(9) Executive Director--Executive Director of the Texas Department of Housing and Community Affairs.]

(5) [(10)] HUD--U.S. Department of Housing and Urban Development.

[(11) Local government--A county, municipality, special district, or any other political subdivision of the state; a public, non-profit housing finance corporation created under Chapter 394 of the Texas Local Government Code; or a combination of those entities. (§2306.004).]

(6) [(12)] Local Operators (LOs)--LOs are the local administrators who perform unit inspections, provide client processing, and perform other administrative duties on the Department's behalf as Housing Choice Vouchers are issued and maintained in some of the local communities served by the Department's Housing Choice Voucher Program.

[(13) Material Deficiency--Any individual Deficiency or group of Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of a LO Application or eligibility for LO Renewal or

which, are repeated and pervasive that they indicate a failure by the LO to submit a substantively complete and accurate Application.}]

[(14) NOFA--Notice of Funding Availability, published in the Office of the Secretary of State's Texas Register Publication.}]

[(15) Nonprofit Organization--A public or private organization that:}]

[(A) has evidence of a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3) of the Internal Revenue Code of 1986, a charitable, nonprofit corporation, or §501(c)(4) of the Internal Revenue Code of 1986, a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective throughout the length of any contract agreements; or a current group exemption letter from the IRS that is dated 1986 or later, that reflects the Applicant classified as a subordinate of a central non-profit organization under the Internal Revenue Code. The group exemption letter must specifically list the Applicant; and]

[(B) a private nonprofit organization's pending Application for §501(c)(3) or (4) of the Internal Revenue Code of 1986, status cannot be used to comply with the tax status requirement.}]

[(16) Open Application Cycle--A defined period during which Applications may be submitted according to a published NOFA and which will be reviewed on a first come-first served basis until all funds available are committed or until the NOFA is closed, whichever is earlier.}]

(7) [(47)] Owner--The Person who owns a unit for which a Section 8 Housing Choice Voucher is being considered or being used.

(8) [(48)] Program--The Section 8 Housing Choice Voucher Program operated by the Department.

[(19) Program Noncompliance--LOs of the Department's Section 8 program will be in Program Noncompliance if they do not meet the performance requirements or the LO eligibility requirements.}]

(c) Performance Requirements. The duties and expectations of the LO include the following and will be included in the LO contract. LO must:

(1) follow and comply with HUD's rules and regulations, including the U.S. Housing Act of 1937, the Annual Contributions Contract between the Department and HUD, the Housing Assistance Program contract between the Department and the owner of the unit occupied by an assisted family, as well as the Department's Administrative Plan and other applicable laws covering the Program;

(2) designate a specific contact to serve as a liaison with the Department;

(3) disseminate [to Housing Choice Voucher recipients] information concerning the availability and nature of housing assistance for lower-income families;

(4) seek [make public invitations] to increase the number of local property Owners willing to make dwelling units available for leasing to eligible families;

[(5) assist in receiving and reviewing applications from the public for participation in the program.}]

[(6) assist in verifying program eligibility and selecting eligible families for participation according to Departmental rules and policies.}]

(5) [(7)] assist in the issuance of Housing Choice Vouchers to selected eligible families and provide the family with necessary information regarding the program in accordance with 24 CFR §982.301;

[(8) determine each eligible family's unit size requirements in accordance with Subpart K of 24 CFR Part 982.}]

[(9) assist in determining the amount of total tenant payment and housing assistance payment, including calculation of allowances for utilities and other services under 24 CFR §982.505.}]

(6) [(40)] certify rent reasonableness under 24 CFR §982.507;

(7) [(44)] assist in facilitation of the Owner's [owner's] execution of the Housing Choice Voucher Contract in a form prescribed by HUD under 24 CFR §982.451;

(8) [(42)] annually, assist in re-determination of [families] eligibility and calculation of the amount of housing assistance payment in accordance with HUD established schedules and under 24 CFR §982.516, and submit redetermination information to the Department within ninety (90) to one-hundred-twenty (120) days of request;

(9) [(43)] perform any necessary Housing Quality Standard inspections [or other inspections required by HUD] and notify Owners and families of property inspection determinations;

(10) [(44)] perform any necessary Housing Quality Standard inspections for new admissions within sixty (60) days, or within one-hundred-twenty (120) days with Department approval of sixty (60) day extension;

(11) [(45)] assist in coordination of portability requests [from housing choice voucher families] in accordance with Department policies;

(12) [(46)] assist in processing changes in income and changes in household requests in accordance with Department policies;

[(17) provide for prompt and timely lease up of vouchers when released by the Department or when existing vouchers become available through clients exiting the Program.}]

(13) [(48)] maintain confidential client files in a manner that protects the privacy of each client and maintains [to maintain] the same for future reference;

(14) [(49)] store physical client files in a secure space in a manner that ensures confidentiality and in accordance with program [LO] policies and procedures; and

[(20) add, based on availability, housing choice vouchers to the LO service area; and]

(15) [(24)] perform such other functions as directed by the Department.

(d) Eligibility of Local Operators.

(1) Eligibility Criteria for [Applicants and] LO Contract Renewals. Currently [New applicants for LO designation and currently] designated LOs wishing to renew their contract must meet the following eligibility criteria:

[(A) Organizations or entities eligible to be a LO of the Department's Housing Choice Voucher Program are:}]

[(i) Nonprofit organizations.}]

[(ii) Local Units of Government.}]

[(iii) For-profit organizations.}]

~~[(iv)] Public Housing Authorities (PHA's); or]~~

~~[(v)] Other eligible entities.]~~

(A) ~~[(B)]~~ Eligible organizations must have a publicly accessible confidential meeting space available to meet with Housing Choice Voucher families.

(B) ~~[(C)]~~ Eligible organizations must have access to the internet, electronic mail, and a telephone for communication with the Department.

(2) Ineligibility Criteria for LOs. The following conditions will cause [a new Applicant for LO designation or] a currently designated LO wishing to renew their contract, to be ineligible:

~~[(A) Program Noncompliance--Each Application and Contract Renewal will be reviewed for Program Noncompliance. Applications and contract renewals found in Program Noncompliance or otherwise violating this chapter at the time of Application and prior to Contract execution are ineligible for funding and will be terminated without being processed as a material deficiency.]~~

(A) ~~[(B)]~~ Failure to comply with federal and state law and/or failure to comply with the terms outlined in the LO contract; or refusal by the LO to assist in issuing Housing Choice Vouchers [housing choice vouchers] in a timely manner and/or unwillingness to add vouchers to the LO service area [may result in the termination of a LO contract].

(B) ~~[(C)]~~ The LO [Applicant] has failed to perform the performance requirements outlined in subsection (c) of this section.

(C) ~~[(D)]~~ The LO had [Applicant is an Administrator of] a previously funded Contract for which Department funds have been partially or fully de-obligated due to failure to meet contractual obligations during the prior 12 months [prior to the Application submission date].

(D) ~~[(E)]~~ The LO [Applicant] has failed to submit or is delinquent in a response to provide an explanation, or evidence of corrective action as a result of a technical assistance visit by the Department.

(E) ~~[(F)]~~ The LO [Applicant] has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the "List of Parties Excluded from Procurement of Non-procurement Programs" or has otherwise been debarred by HUD or the Department.

(F) ~~[(G)]~~ The LO [Applicant] has violated the state's revolving door policy.

(G) ~~[(H)]~~ The LO [Applicant] has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses [within 15 years preceding the Application deadline].

(H) ~~[(I)]~~ The LO [Applicant] at the time of renewal [Application submission] is:

(i) subject to an enforcement or disciplinary action under state or federal securities law or by the Financial Industry Regulatory Authority (FINRA) is subject to a federal tax lien; or

(ii) is the subject of an enforcement proceeding with any governmental entity.

(e) Local Operator Contract Execution and Renewal.

(1) Upon determination that a renewal is eligible and desired by both parties [Upon Board approval of a new LO], the Department's Executive Director or Deputy Executive Director that oversees

the Housing Choice Voucher Program and the LO shall enter into and execute an agreement for the administration of the Housing Choice Voucher program. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications, amendments or extensions to the contract.

(2) Contracts will be for a [an initial] one year period [with an automatic renewal in one year increments for a period not to exceed four (4) additional years conditioned on maintaining compliance with the eligibility criteria in subsection (d) of this section and having performed according to the performance requirements outlined in subsection (e) of this section. If the LO meets these requirements and is not in Program Noncompliance with the Department, the contract with the LO will be renewed].

(3) LOs in an existing contract will, upon expiration of the current contract, be eligible to execute a contract under paragraph (2) of this subsection so long as they are maintaining compliance with the eligibility criteria in subsection (d) of this section and have performed according to the performance requirements outlined in subsection (c) of this section. [If the LO meets these requirements and is not in Program Noncompliance with the Department, the new contract described in paragraph (2) of this subsection will be executed.]

~~[(f) New Local Operator Application Procedures and Requirements.]~~

~~[(1) If a LO has terminated its contract with the Department or chosen not to renew a contract with the Department, and the Department chooses to find a replacement LO to continue providing services to existing clients in the geographic area served by the prior LO, the Department will release a Notice of Funding Availability (NOFA) specifying the defined geographic area requiring continued service, information on the volume and geographic locations of the existing pool of voucher holders, and the LO requirements for operating the program if selected.]~~

~~[(2) The Department will develop and publish the NOFA and Application materials on its website. Applicants must verify and ensure the accuracy, sufficiency and receipt of all submissions to the Department.]~~

~~[(3) The Department reserves the right to request supplemental information or explanation from the Applicant in order to cure an Applicant deficiency.]~~

~~[(4) Applications must be submitted within the Application Acceptance Period as detailed in the NOFA.]~~

~~[(5) Evaluative criteria and any other Application or contractual requirements will be specified in the NOFA. Applications that do not meet minimum threshold criteria will not be considered for LO designation.]~~

~~[(g) Expansion of Section 8 service area. At least once each year, no later than March 31st, the Department will evaluate the availability of voucher funding and the current usage of existing vouchers, and determine whether an announcement of funding availability to expand vouchers outside of the current geographic areas served is appropriate. If deemed appropriate, a Notice of Funding Availability will be released specifying eligible geographic areas, evaluative criteria, any restrictions on voucher populations and LO requirements for operating the program if selected.]~~

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 May 27, 2016.



## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 31. ADMINISTRATION

##### 16 TAC §31.4

The Texas Alcoholic Beverage Commission proposes amendments to §31.4, relating to Public Information Signs.

Section 31.4 addresses signs that must be posted at a licensed premises informing consumers how to file a complaint with the commission about the sale or service of alcoholic beverages at the establishment, and signs that must be posted at licensed or permitted premises that are authorized to sell alcoholic beverages for consumption on the premises informing consumers of health risks associated with drinking alcohol during pregnancy.

The proposed amendments provide the statutory authorization for each sign requirement. The proposed amendments clarify that the complaint sign requirement applies to businesses that hold permits as well as to those which hold licenses. The proposed amendments also indicate that complaints may be filed by using the commission's website or a commission-authorized mobile application, as well as by mail or telephone.

Section 31.4 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the statutory authority for the rule will be stated and additional means of filing a complaint will be available.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, §5.53(d), which authorizes the commission to require the posting of signs informing the public of how to notify the commission of a complaint, and §11.042 and §61.111, which provides that the commission shall by rule require the posting of signs regarding the health risks of drinking during pregnancy.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 5.53, 11.042, and 61.111 and Government Code §2001.039.

##### §31.4. Public Information Signs.

(a) Complaint Sign. In accordance with Alcoholic Beverage Code §5.53(d), any [Any] licensed or permitted business location in the state which sells or serves alcoholic beverages to the ultimate consumer shall display at his place of business in a prominent place easily seen by the public, i.e. near the door or by the cash register, a sign that provides the following information: "If you have a complaint about the sale or service of alcoholic beverages in this establishment, please contact the Texas Alcoholic Beverage Commission by mail at [ ] P.O. Box 13127, Austin, Texas 78711-3127, by [øf] phone at (512) 206-3333, by internet at [www.tabc.texas.gov](http://www.tabc.texas.gov), or by a TABC-authorized mobile application."

(1) This sign shall be no smaller than 6 inches by 3-1/2 inches and shall be in lettering or type of a size sufficient to render it both conspicuous and readily legible.

(2) The sign shall be made of sturdy material; if made of paper, the weight shall be no less than 65# stock.

(b) Health Risk Warning Sign. In accordance with Alcoholic Beverage Code §§11.042 and 61.111, a [A] holder of a license or permit authorizing the sale of alcoholic beverages for on premises consumption shall display a health risks warning sign. The health risks warning sign must:

(1) be posted at each egress of all public restrooms on the licensed premises;

(2) be placed at a level where the sign can be easily seen by persons exiting the restroom;

(3) be not less than 8 1/2 x 11 inches in size;

(4) the following language shall be printed in English and in Spanish, in bold black type on a white surface, or other clearly legible graphic design, with a font or type set size of not less than 28 point Arial or Helvetica:

Figure: 16 TAC §31.4(b)(4)

(c) The responsibility of furnishing the required signs in this section is the sole responsibility of the licensee or permittee.

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

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## CHAPTER 33. LICENSING

### SUBCHAPTER A. APPLICATION PROCEDURES

#### 16 TAC §33.7

The Texas Alcoholic Beverage Commission proposes amendments to §33.7, relating to Warning Sign Requirements.

Section 33.7 implements Alcoholic Beverage Code §104.06(b), which requires the commission to adopt rules for making a determination whether 51 percent of the gross receipts of a premises for which the license or permit is issued are from the sale or service of alcoholic beverages for on-premises consumption. If the commission determines that 51 percent of the gross receipts are from such sales or service, Alcoholic Beverage Code §104.06(c) requires the license or permit holder to comply with Government Code §411.204. That section of the Government Code requires certain types of license or permit holders who meet the 51 percent threshold to post a sign that gives notice to persons who are licensed to carry a handgun that it is unlawful for them to carry a handgun on the premises.

The proposed amendments retitle the section to more precisely reflect the commission's role, which is to monitor sales data and make the 51 percent determination. The proposed amendments more accurately reflect the statutory requirement that the commission make such determination regarding any premises that allows on-premises consumption and not just those premises that are subject to the posting requirements in Government Code §411.204. For the same reason, the exemption for food and beverage certificate holders in subsection (c) of the current rule is deleted in the proposed amendments.

Section 33.7 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the commission's statutory duties are more accurately described.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280.

They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §104.06(b), which requires the commission to adopt rules for making the determinations that are required in subsection (a) of that section.

The proposed amendments affect Alcoholic Beverage Code §5.31 and §104.06, and Government Code §2001.039.

§33.7. *Monitoring Sales Data [Warning Sign Requirements]*.

(a) This rule is adopted pursuant to §104.06 of the Alcoholic Beverage Code.

(b) Each applicant for an original or renewal permit or license that allows on-premise consumption of any alcoholic beverage [of a beer and wine retailer's permit, mixed beverage permit, private club registration permit, or retail dealer's on-premise license] shall furnish sales data or, if not available, projection of sales for the location at which the license or permit is located or will be located. The projection or sales data should include a sufficient breakdown of sales into the categories of food, alcoholic beverages, and other major categories of sales at the location.

~~{(e) Holders of a food and beverage certificate are not subject to the provisions of this section; however, the holders of wine and beer retailer's permits and retail dealer's on-premise licenses are subject to record keeping provisions set forth in §33.5 of this title (relating to Food and Beverage Certificate).}~~

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

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## SUBCHAPTER C. LICENSE AND PERMIT ACTION

#### 16 TAC §33.34

The Texas Alcoholic Beverage Commission proposes new §33.34, relating to Reporting Permit or License Changes.

Currently, permittees and licensees report any changes to the information provided in their original application (or most recent renewal application) at the time of renewal. This complicates, and thus slows, the processing of renewal applications. In addition, if a change occurs that would disqualify a permit or license

holder, the commission may not be aware of it until the end of the two-year term of the permit or license. Proposed new §33.34 establishes timelines for reporting changes prior to renewal.

Proposed subsection (a) provides the reason for the rule and the statutory authority for it. It also establishes that the rule applies to changes in the information that was provided to the commission in connection with an original application, or changes to the most recent information that has been provided to the commission.

Proposed subsection (b) sets forth the types of changes that must be reported within 30 days following the date the change occurred, including changes to the type of business, contact information, criminal history, property ownership, arrangements with management companies or concession companies, the employer of certain agent permittees or licensees, or (in most circumstances) the organization (as that term is defined by Business Organizations Code §1.002(62), which includes corporations, partnerships, limited liability companies, etc.). Certain organizational changes that fall under proposed subsection (d) have a different timeline.

Proposed subsection (c) provides that changes to the corporate control of a mixed beverage permittee (as described in Alcoholic Beverage Code §28.04) or to the tradename of any permit or license must be reported prior to the date the change will occur.

Proposed subsection (d) provides that a change to a business entity that is described in Alcoholic Beverage Code §11.12 or §61.14 must be reported not later than the 11th day preceding the date the change will occur, as prescribed by those sections of the Code.

Proposed subsection (e) refers to two types of changes (a change of the mailing address or of the licensed or permitted location) that are subject to the timelines established by other commission rules.

Proposed subsection (f) provides that all changes subject to the section must be reported on forms prescribed by the commission.

Proposed subsection (g) clarifies that nothing in the section restricts the commission's authority under Alcoholic Beverage Code §5.32 to get necessary information at any time.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on local government attributable to it. There should be no fiscal impact on state government.

The proposed new rule will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. The proposed new rule simply establishes new timelines for reporting information that is already being reported at the time of renewal.

There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the commission will have more current information about its permittees and licensees, which will help ensure that they are qualified to hold their permits or licenses. In addition, the processing of renewal applications should be expedited.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-

3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rule on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed new rule affects Alcoholic Beverage Code §§5.31, 5.32, 11.08, 11.12, 28.04, 61.09 and 61.14 and Business Organizations Code §1.002(62).

§33.34. Reporting Permit or License Changes.

(a) In order to process renewal applications efficiently and to assure that permittees and licensees are qualified throughout the term of their permits or licenses, the commission prescribes the following reporting timelines for changes to information that was provided in connection with an original application or for changes to the most recent information that has been reported to the commission. For the reasons recited above, the commission finds that the timelines are necessary to accomplish the purposes of the Alcoholic Beverage Code pursuant to Alcoholic Beverage Code §5.32.

(b) Any of the information described in this subsection that changes from the information provided in the original application, or that was provided in the most recent reported change to the commission, must be reported to the commission within 30 days following the date the change occurred:

(1) the addition or removal of a person whose name was included on the original application or whose name would be required if a new original application was being submitted, regardless of the title, position or ownership held;

(2) a change to the type of business;

(3) a change to a phone number or email address;

(4) a change to a person's criminal history that affects their qualifications to hold a permit or license;

(5) a change of the owner of the premises, a sublessor, a management company, or a concession company, or to the terms of any agreements with any such persons;

(6) a change of the employer of a holder of a Distiller's Agent's Permit, an Agent's Permit, a Manufacturer's Agent Permit, or an Agent's Beer License; or

(7) a change of organization as that term is defined in Business Organizations Code §1.002(62), other than a change of business entity described in Alcoholic Beverage Code §11.12 or §61.14 which is subject to the requirements of subsection (d) of this section.

(c) Any of the information described in this subsection that changes from the information provided in the original application, or that was provided in the most recent reported change to the commission, must be reported to the commission prior to the date the change will occur:

(1) a change in corporate control pursuant to Alcoholic Beverage Code §28.04; or

(2) a change of tradename.

(d) A change of business entity described in Alcoholic Beverage Code §11.12 or §61.14 must be reported not later than the 11th day preceding the date the change will occur.

(e) This section does not apply to:

(1) a change of mailing address, which is subject to the requirements of §33.33 of this Title; or

(2) a change in the licensed or permitted location pursuant to Alcoholic Beverage Code §11.08 or §61.09, which is subject to the requirements of §33.13 of this Title.

(f) All changes subject to this section must be reported on forms prescribed by the commission.

(g) Nothing in this section limits the commission's authority to request information from a permittee or licensee at any time to determine if a change has occurred.

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

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For further information, please call: (512) 206-3489



## CHAPTER 35. ENFORCEMENT

### SUBCHAPTER A. TRANSPORTATION OF LIQUOR

#### 16 TAC §35.2

The Texas Alcoholic Beverage Commission proposes amendments to §35.2, relating to Importation of Liquor.

Section 35.2 addresses the transportation by holders of carrier permits or private carrier permits of liquor imported into the state. Although both types of carriers are required by subsection (b) to have invoices covering a shipment of liquor into the state, subsection (c) only applies its obligation regarding the specificity of such an invoice to private carrier permittees. Similarly, subsection (d) only imposes the obligation to use the most direct route practical on private carrier permittees.

The proposed amendments change the title of the section to more precisely reflect that the substance of the rule deals with the transportation, rather than the actual importation, of liquor. The proposed amendments also apply the obligations imposed by subsections (c) and (d) to any type of carrier.

Section 35.2 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because all carriers transporting liquor will be subject to the same requirements.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 41.01 and 41.02, and Government Code §2001.039.

#### §35.2. Transportation of Imported [~~Importation of~~] Liquor.

(a) This rule relates to liquor imported into the state under the authority of §§41.01(a) or 42.01(a) of the Alcoholic Beverage Code.

(b) Liquor imported into the state for resale may only be transported by the holder of a carrier's permit or a private carrier's permit. Shipments of liquor into the state must be accompanied by a copy of the invoice covering that liquor.

(c) Non-resident sellers delivering liquor for importation to any class of [private] carrier permittees shall cause the invoice covering that shipment of liquor to show delivery to the [private] carrier.

(d) All classes of [Private] carriers shall transport liquor by the most direct route practical to the place of destination.

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

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### SUBCHAPTER D. PLACE OR MANNER

#### 16 TAC §35.32

The Texas Alcoholic Beverage Commission proposes amendments to §35.32, relating to Reporting a Breach of the Peace.

Section 35.32 addresses the procedures to be followed by a permittee or licensee who is reporting to the commission a breach of the peace that has occurred at a licensed or permitted location. Subsection (c) describes the methods by which such reports may be made.

The proposed amendments to subsection (c) update the commission's e-mail address. Also, proposed new paragraph (5) would allow reports to be made using a commission-authorized mobile application. The commission anticipates rolling out such an application soon.

The commission intends to review the remainder of §35.32 at a later date under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because there will be another convenient means of filing breach of peace reports, thus removing a possible impediment to making these required filings.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31.

§35.32. *Reporting a Breach of the Peace.*

(a) This section relates to Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).

(b) Except as provided in this subsection, a permittee or licensee shall report to the commission a breach of the peace on a licensed premises as soon as possible, but not later than five calendar days after the incident. If a shooting, stabbing or murder, or an incident involving serious bodily injury, occurs on the licensed premises, the permittee or licensee shall report the breach of the peace not later than 24 hours from the time of the incident.

(c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:

- (1) in person at any commission office;
- (2) by facsimile transmission to the appropriate commission office;
- (3) through the commission's website; [øø]
- (4) by e-mail to [breachofpeace@tabc.texas.gov](mailto:breachofpeace@tabc.texas.gov); or [[breachofpeace@tabc.state.tx.us](mailto:breachofpeace@tabc.state.tx.us)]
- (5) by a commission-authorized mobile application.

(d) The administrator or administrator's designee may require, in writing, that a permittee or licensee make any reports required by this section in a specific manner as instructed, if the permittee or licensee has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(31).

(e) At a minimum, the report required by this section shall include the information required in paragraphs (1) - (9) of this subsection, but may include other information the person making the report wishes to include:

- (1) the date and time of the report;
- (2) the date and time of the incident being reported;
- (3) the trade name of the licensed premises where the incident occurred;
- (4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;
- (5) the name of the person filing the report, that person's relationship to the holder of the permit or license, and contact information for that person;
- (6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the permit or license to answer questions from the commission about the incident, that person's relationship to the permit or license holder, and contact information for that person;
- (7) a brief description of the incident;
- (8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and
- (9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b) of this section and subject to the provisions of subsection (g) of this section, a reportable "breach of the peace" occurs when law enforcement or emergency medical services personnel respond to the licensed premises, or when a disturbance is created on the licensed premises by a person:

- (1) shooting, stabbing or murdering a person;
- (2) causing bodily injury to another person;
- (3) threatening another person with a weapon;
- (4) discharging a firearm on the licensed premises; or
- (5) destroying the permittee's or licensee's property, if the incident is reported by the permittee or licensee to a law enforcement agency.

(g) For purposes of this section:

(1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder, or an incident involving serious bodily injury) creates a "disturbance", and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the permittee or licensee, or any person allowed by the permittee or licensee, is on the licensed premises; and

(B) interferes with, interrupts, or intrudes upon the operation or management of the licensed premises;

(2) a shooting, stabbing or murder, or an incident involving serious bodily injury, on the licensed premises is always a "disturbance", and therefore is always a reportable breach of the peace;

(3) a "licensed premises" is as defined in Alcoholic Beverage Code §11.49;

(4) a "permittee" is as defined in Alcoholic Beverage Code §1.04(11); and

(5) a "licensee" is as defined in Alcoholic Beverage Code §1.04(16).

(h) A permittee or licensee may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the permittee or licensee can demonstrate that he had no knowledge, nor in the exercise of reasonable care should have had knowledge, of the alleged breach of peace on the licensed premises.

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

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## CHAPTER 39. PORT OF ENTRY

### 16 TAC §39.1

The Texas Alcoholic Beverage Commission proposes amendments to §39.1, relating to Tax Stamps.

Section 39.1 applies to stamps used in connection with the commission's tax collection activities at ports of entry. Subsections (a) and (b) address the liability of commission representatives relating to the value of the stamps and the funds collected for their issuance. Subsections (c) and (d) address classes of stamps and types of beverages.

The commission has determined that the rule is archaic and proposes amendments to make the section more current and useful, including a change to the title of the section.

The proposed amendments to subsection (a) state the commission's statutory authority regarding the use of stamps to demonstrate the payment of taxes.

The proposed amendments to subsection (b) clarify that alcoholic beverages imported into the state for personal consumption must pay the applicable state tax plus a \$3.00 administrative

fee. The proposed amendments also provide that the posted tax rates will include the administrative fee.

The proposed amendments to subsection (c) provide that the payment of the fees and taxes described in subsection (b) must be documented by a tax stamp.

The proposed amendments delete subsection (d) as unnecessarily duplicative of the Alcoholic Beverage Code §1.04(4) definition of "illicit beverage."

Section 39.1 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for a rule addressing taxation at ports of entry continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the statutory authority for the rule will be stated, obsolete requirements will be removed from the commission's rules, and personal importation of alcoholic beverages will be addressed.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 107.07, 201.71, and 201.81 and Government Code §2001.039.

#### §39.1. *Personal Importation [Tax Stamps]*.

(a) This section applies to alcoholic beverages imported into this state for personal use under the authority of Alcoholic Beverage Code §§107.07, 201.71 and 201.81. [The commission representative in charge of each port of entry shall be accountable to the commission on his bond for the value of all stamps delivered to him.]

(b) All alcoholic beverage containers imported into Texas for personal consumption are subject to the state tax and a \$3.00 administrative fee. This administrative fee shall be included in the posted tax rates. [Funds received by the commission from the issuance of such stamps shall be deposited by the commission representative in charge

at each respective port of entry in a bank or banks designated by the administrator and shall be electronically transferred to the State Treasury by the commission.]

(c) Payment of the fees and taxes must be documented by a tax stamp. [It shall be unlawful for any person to affix a state tax stamp to any alcoholic beverage container unless such stamp as indicated by its class corresponds with the type of beverage in such container.]

~~[(d) Any alcoholic beverage to which a stamp of a different class has been affixed shall be deemed an illicit beverage and subject to confiscation.]~~

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

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For further information, please call: (512) 206-3489



## CHAPTER 41. AUDITING SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

### 16 TAC §41.28

The Texas Alcoholic Beverage Commission proposes amendments to §41.28, relating to Sale and Delivery of Beer to Retail Premises and Private Clubs.

Section 41.28 addresses transporting beer through a dry area and consummating its sale at a retailer's premise or a private club located in a wet area.

The proposed amendments clarify the language of the rule and include references to additional authorized sellers who may engage in the activity.

Section 41.28 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the language of the rule will be clearer.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas

78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

*§41.28. Sale and Delivery of Beer to Retail Premises and Private Clubs.*

(a) Beer intended to be delivered in sales transactions consummated at a licensed retailer's place of business or at a private club located in a wet area may be transported through dry areas ~~[or through any incorporated city or town or any part thereof wherein the manufacture, storage, sale, delivery, or transportation of liquor or beer is prohibited by charter or ordinance]~~ upon vehicles owned or leased and operated ~~[in such transportation]~~ by the holder of a manufacturer's self-distribution license, any type of ~~[a licensed manufacturer or]~~ distributor license, or a brewpub license who is authorized to sell to retailers or private clubs located in wet areas. ~~The~~; provided, however, that this shall apply only to the transportation of beer from one wet area for sale and delivery in another wet area; and provided further that ~~the~~ person directly in charge of the vehicle used in such transportation must possess ~~[shall have in his possession]~~ a written statement furnished and signed by the authorized seller showing ~~[shipper that such beer is delivered into the charge of said person,]~~ the quantity of beer so delivered to such person, the origin thereof, and the fact that said beer is intended for delivery only upon any sale that may be consummated by such person acting as agent for the authorized seller ~~[shipper]~~ at the place of business of a licensed retail dealer or a private club located in a wet area.

(b) A [It shall be unlawful for any] person into whose charge beer is delivered as [herein] provided in this section and who is delivering and obtaining payment for [to sell or deliver] any such beer at [or consummate any sale of beer except to] a licensed retailer's [retailer at his] place of business or at [to] a private club located in a wet area must at that time provide a sales invoice for such beer that must be signed by the purchaser of the beer. The invoice must show the: All such sales shall be recorded on sales tickets indicating the purchaser, the quantity of each type of container sold, and the price. A copy of such invoice ~~[sales ticket]~~ shall be furnished to the purchaser at the time of sale and a copy of the signed sales invoice must ~~[shall]~~ be furnished to the authorized seller ~~[shipper]~~ of such beer within 24 hours from the time of its delivery.

(c) A [It shall be unlawful for any] person into whose charge beer is delivered as [herein] provided in this section must possess the signed sales invoices required by subsection (b) [to make any false report of a delivery or to fail to have in his possession all beer so delivered to him or in lieu thereof the proper sales tickets herein required] for any such beer that is not in the person's [his] possession. The; or to fail to exhibit his records pertaining to any such shipment must be shown to [upon the demand of] any representative of the commission or any peace officer on demand.

~~[(d) It shall be unlawful for any manufacturer or distributor to fail to require of each person into whose charge beer is delivered, as~~

herein provided for redelivery in sales transactions consummated at the place of business of a licensed retailer or private club located in a wet area; to account for any beer so delivered by him within 24 hours after any such delivery is made; or to fail to require said person to deliver to said manufacturer or distributor a proper sales ticket as herein required covering each sale and delivery of beer made by such person; or to fail to make and keep a record of each such sale of beer in the manner required in the Alcoholic Beverage Code, §62.05 or §64.04.]

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 May 24, 2016.

TRD-201602539

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



### 16 TAC §41.30

The Texas Alcoholic Beverage Commission proposes amendments to §41.30, relating to Sale and Delivery of Ale to Retail Premises.

Section 41.30 addresses transporting ale through a dry area and consummating its sale at a retailer's premise or a private club located in a wet area.

The proposed amendments clarify the language of the rule and include references to additional authorized sellers who may engage in the activity.

Section 41.30 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the language of the rule will be clearer.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June

30, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

#### §41.30. Sale and Delivery of Ale to Retail Premises and Private Clubs.

(a) ~~The [It shall be lawful for the] holder of a brewpub license who is authorized to sell to retailers or private clubs located in wet areas, wholesaler's permit, any type of [or] Class B wholesaler's permit, or a brewer's self-distribution permit may [who is also the holder of a private carrier's permit to] transport ale under a private carrier permit and sell it [ale] to licensed retailers or private clubs located in wet areas [holders of package store permits, wine only package store permits, wine and beer retailer's permits, and mixed beverage permits] without obtaining previous purchase orders from such licensed retailers or private clubs located in wet areas.;~~ provided, however, that no invoice shall be required for the transportation of ale unless in the course of such transportation it is necessary to cross territory in which the manufacture, sale and distribution of ale is prohibited.]

(b) Ale intended to be delivered in sales transactions consummated at a licensed retailer's place of business or at a private club located in a wet area may be transported in a vehicle permitted under a private carrier permit through dry areas [or through any incorporated city or town or any part thereof wherein the manufacture, storage, sale delivery or transportation of ale is prohibited by charter or ordinance upon vehicles owned and operated in such transportation] by the holder of a brewpub license authorized to sell to retailers or private clubs located in wet areas, wholesaler's permit, any type of [or] Class B wholesaler's permit, or a brewer's self-distribution permit. The person [who is of a private carrier's permit; provided, however, that this shall apply only in the transportation of ale from one wet area for sale and delivery in another wet area; and provided further that such person] directly in charge of the vehicle used in such transportation must possess [shall have in his possession] a written statement furnished and signed by the seller [shipper] showing [that such ale is delivered into the charge of said person,] the quantity of ale so delivered to such person, the origin thereof, and the fact that said ale is intended for delivery only upon any sale that may be consummated by such person acting as agent for the seller [shipper] at the place of business of a licensed retailer or at a private club located in a wet area [retail dealer].

(c) ~~A [It shall be unlawful for any] person into whose charge ale is delivered as [herein] provided in this section and who is delivering and obtaining payment for [to sell or deliver any] such ale [upon any sale consummated] at the retailer's or private club's place of business must at that time provide a sales invoice for such ale that must be signed by the purchaser of the ale. The invoice must show the purchaser, [without then and there obtaining a signed receipt for such ale redelivered by him, showing] the quantity of each type of container sold, and [thereof] the price [at which the same is sold], and whether such sale is made upon cash or credit terms. The person must[; or to fail to make] report the delivery and provide a copy of the signed sales invoice to the seller [shipper] of such ale within 24 hours from the time of its delivery[; or to make any false report of such delivery].~~

(d) ~~A [It shall be unlawful for any] person into whose charge ale is delivered as [herein] provided in this section must possess the signed sales invoices required by subsection (c) [to fail to have in his possession all ale so delivered to him or in lieu thereof the receipts~~

herein required] for any such ale that is not in the person's [his] possession. ~~The[, or to fail to exhibit his] records pertaining to any such shipment must be shown to [upon the demand of] any representative of the commission or any peace officer on demand.~~

~~[(e) It shall be unlawful for the holder of a wholesaler's permit or Class B wholesaler's permit to fail to require of each person into whose charge ale is delivered, as herein provided for redelivery in sales transactions consummated at the place of business of a licensed retailer, to account for any ale so delivered by him within 24 hours after any such delivery is made; or to fail to require said person to deliver to said wholesaler or Class B wholesaler a receipt as herein required covering each sale and delivery of ale made by such person; or to fail to make and keep a record of every such sale of ale in the manner required in the Alcoholic Beverage Code, §206.01.]~~

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 May 25, 2016.

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 206-3489



## 16 TAC §41.48

The Texas Alcoholic Beverage Commission proposes amendments to §41.48, relating to Changes Relating to Control.

Section 41.48 applies to mixed beverage permits and private club permits. It defines "effective control" and "managerial control" and addresses how they relate to qualifications for holding a mixed beverage or private club permit. Subsection (d) describes certain changes relating to these permits that must be reported to the commission.

The commission is separately proposing a new §33.34 which sets forth timelines for reporting certain changes relating to permits and licenses. To avoid any conflict in the reporting obligations of mixed beverage or private club permittees, the commission proposes to amend §41.48 by deleting subsection (d) simultaneously with its proposal for new §33.34.

The commission intends to review the remainder of §41.48 at a later date under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because there will not be a conflict in the reporting obligations of certain permittees.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31.

### §41.48. *Changes Relating to Control.*

(a) Definitions. Any terms defined in the Alcoholic Beverage Code shall have the meaning assigned to it by such code subject to modifications expressed in this section.

(1) Any change of--Any one of the following:

(A) any addition of a person;

(B) any removal of a person; and

(C) any transfer of title, responsibility, dominion or power from one or more persons to another person or persons.

(2) Effective control--Shall include, but is not limited to, situations in which a person (or persons) is in fact able to direct the general course of corporate affairs, even though such person or persons may not hold controlling ownership.

(3) Managerial control--With reference to any business conducted under authority of a permit, this term severally includes, but is not limited to, each of the following:

(A) having discretion to formulate and institute operating policy regarding purchases, disbursements, maintenance of records or handling of funds;

(B) having authority to hire or fire personnel; and

(C) having general supervisory authority over the operation of the business on a regular basis.

(4) Permit--Shall mean only a mixed beverage permit or private club permit and subsidiary permits of either. The original permit and all renewals thereof shall constitute a single, continuous authority within the meaning of this section.

(b) Disqualification. Any corporation which by any means is effectively controlled, jointly or severally, by a person or persons not then individually qualified for the issuance of a mixed beverage permit of his own, shall be disqualified to hold a mixed beverage permit.

(c) Change of control.

(1) Each corporation holding a mixed beverage permit shall report to the commission any change of effective control.

(2) Each corporation or unincorporated association holding a private club permit shall report to the commission any change of effective control.

~~[(d)]~~ Reporting corporate change. Regardless of whether or not any change of control results therefrom, each corporation holding a mixed beverage permit and each holder of a private club shall report to the commission the following:}]

~~[(1)]~~ any change of officers;}]

~~[(2)]~~ any change of directors;}]

~~[(3)]~~ if a corporation, any change of persons who severally hold not less than 10% of the outstanding shares of voting stock in such corporation;}]

~~[(4)]~~ if a corporation, any change of persons who severally hold not less than 25% of the outstanding shares of nonvoting stock in such corporation;}]

~~[(5)]~~ any creditor of the corporation or unincorporated association holding demand for term certain obligations of such corporation in a cumulative amount equal or exceeding 25% of the book value of the assets of the corporation; and}]

~~[(6)]~~ any change of persons exercising managerial control of the business conducted under authority of the permit.}]

~~[(d)]~~ ~~[(e)]~~ Disclosure. Upon request of the administrator, any corporation holding a mixed beverage permit, or any holder of a private club permit, shall disclose to the commission any information which may assist the administrator in determining whether or not any change has occurred in the control of that corporation or unincorporated association.

~~[(c)]~~ ~~[(f)]~~ Determination of effective control. If the administrator has reason to believe that a change may have occurred in the effective control of any corporation holding a mixed beverage permit [Mixed Beverage Permit], he may hold hearings to determine if such a change has occurred, and further to determine whether or not said corporation is presently, or was at any time within the present or next preceding permit term, disqualified for renewal of said permit by virtue of any person or persons jointly or severally controlling such corporation.

~~[(f)]~~ ~~[(g)]~~ Cancellation. If upon notice and hearing the administrator finds that a change of control has occurred, and further finds that at any time within the present or next preceding permit term the persons jointly or severally controlling such corporation were, while so situated, not qualified for the issuance of a mixed beverage permit individually, the administrator shall immediately cancel said permit; provided, however, that if the administrator affirmatively finds to his satisfaction that no participant acted with intent to circumvent this rule or related provisions of the Alcoholic Beverage Code, he shall not cancel said permit but may, in his discretion, suspend said permit for a period not exceeding 60 days or dismiss the cause; and the administrator is hereby authorized in such cases to issue a conditional order, but no conditional status shall exceed one year beyond the entry of the order.

~~[(g)]~~ ~~[(h)]~~ Affidavit. In each instance in which this section requires information to be reported to the commission, such information shall be conveyed by affidavit from an officer of the corporation or unincorporated association and shall be due in the offices of the commission within 10 days of the event, unless the administrator shall allow or direct a different method or time.

~~[(h)]~~ ~~[(i)]~~ Reporting chain of control. In the event that a corporation holding a permit is jointly or severally controlled by another corporation, the corporation holding a permit shall report to the commission the same information about such other corporation as the permittee is required to report about itself. In the event that such other corporation is, in turn, jointly or severally controlled by a third corporation,

and further regarding any additional chain of control in like manner, the corporation holding the permit shall report to the commission information about each corporation in the chain of control the same as is required of the corporation holding the permit.

~~[(i)]~~ ~~[(j)]~~ Failure to provide information. Upon notice and hearing, the administrator may suspend for a period not exceeding 60 days, or cancel, any mixed beverage permit or private club permit if he finds that the permittee has failed or refused to provide any information required by this section.

~~[(j)]~~ ~~[(k)]~~ Timeliness. Upon notice and hearing, the administrator may suspend for a period not exceeding 60 days, or cancel, any mixed beverage permit or private club permit if he finds that the permittee has failed or refused to provide information required by this section in the time or manner prescribed by this section.

~~[(k)]~~ ~~[(l)]~~ Privilege. The reports required by this section shall not be deemed "periodic reports" within the meaning of §5.48 of the Alcoholic Beverage Code, and, unless otherwise made public under the provisions of the code, all such information shall be protected by the privilege declared in §5.48 of the Alcoholic Beverage Code.

~~[(l)]~~ ~~[(m)]~~ Administrator's discretion. The administrator shall have discretion to modify the application of this section to holders of private club exemption certificate permits, but he shall at all times invoke such requirements herein as he may deem necessary to ascertain that such permits are in fact controlled by the organization to whom the permit is issued.

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 May 24, 2016.

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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 206-3489



### 16 TAC §41.49

The Texas Alcoholic Beverage Commission proposes amendments to §41.49, relating to Private Clubs--Temporary Memberships.

Section 41.49 addresses requirements relating to temporary memberships at private clubs pursuant to Alcoholic Beverage Code §32.09.

The proposed amendments eliminate a reference in subsection (c) to typewriters as a means of filling blanks on temporary membership cards. In its place the proposed amendments impose a requirement that the name of the temporary member, the name of the club, the city and the time period covered be legibly completed on the temporary membership card.

In subsection (d), the proposed amendments substitute the title of executive director for administrator, consistent with Alcoholic Beverage Code §5.11(b).

Section 41.49 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commis-

sion has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because references within the rule will be accurate.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §32.09(c), which provides that temporary memberships at private clubs shall be governed by rules promulgated by the commission.

The proposed amendments affect Alcoholic Beverage Code §5.31 and §32.09 and Government Code §2001.039.

§41.49. *Private Clubs--Temporary Memberships.*

- (a) This rule relates to §32.09 of the Alcoholic Beverage Code.
- (b) Temporary membership card.

(1) A holder of a private club registration permit shall issue a temporary membership card to any person who intends to be served alcoholic beverages on its licensed premises, except a person who is a member of the club, or a guest of a member of the club, or, if the club is located in a hotel, a patron of the hotel who is at the hotel for overnight lodging and is a guest of the hotel manager who is a member of the club.

(2) The word "guest" shall mean an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

(3) A holder of a private club registration permit shall prepare a record with entries made in chronological order showing the following about temporary membership cards issued: the date issued, the name of the person to whom the card was issued, and the serial number of the temporary membership card.

(c) A holder of a private club registration permit shall not serve an alcoholic beverage to a person who holds a temporary membership card, unless the temporary card is as follows:

- (1) Issued by the commission to the club.

(2) Issued by the manager of the club, or other person in charge of the premises of the club, to the temporary member.

(3) The blanks, except signature blanks, on the temporary membership card have been properly and legibly completed to include the name of the temporary member, club name, city, and time period covered. [filled by use of a typewriter or by printing in ink.]

(4) Signed at the time of issuance by the manager of the club or other person in charge of the licensed premises.

(5) In possession of the temporary member to whom issued.

(d) Remittance.

(1) A temporary membership card shall not be issued to a club by the commission until the commission has received advance remittance of the effective fee established in the Texas Alcoholic Beverage Code. Such remittance shall be made only by cashier's check, certified check, corporate check, or United States postal money order payable to the Texas Alcoholic Beverage Commission.

(2) Temporary membership cards shall be issued by the commission upon written request of a club on forms provided by the commission together with the proper remittance.

(3) The commission shall issue temporary membership cards to any holder of a private club registration permit only in quantities of at least 50 cards at one time. If larger quantities are requested, the same shall be issued only in multiples of 50; provided, however, that the Executive Director [administrator] is hereby empowered to authorize different multiples if necessary to conform with changes in the method of production of temporary membership cards.

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 May 25, 2016.

TRD-201602573

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 206-3489



**16 TAC §41.51**

The Texas Alcoholic Beverage Commission proposes amendments to §41.51, relating to Private Clubs--Purchases.

Section 41.51 addresses pool systems used by private clubs to purchase alcoholic beverages.

The proposed amendments add the words "pool systems" to the title to accurately reflect the scope of the rule as amended and add a new subsection (b) describing the authorized operation of pool replacement systems. Subsequent subsections are appropriately renumbered, and subsection (a) is clarified to appropriately describe the authorized operation of pool equal assessment systems.

The proposed amendments make appropriate changes in newly renumbered subsection (c) to clarify that its requirements apply to both types of pool systems and make a grammatical change in newly renumbered subsection (d) to accurately reflect the intent of the requirement.

Section 41.51 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because it will address both types of pool systems used by private clubs to purchase alcoholic beverages.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.texas.gov/laws/proposed\\_rules.asp](http://www.tabc.texas.gov/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, June 30, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

*§41.51. Private Clubs--Purchases--Pool Systems.*

(a) Each holder of a private club registration permit operating under a ~~the~~ pool system that ~~requires~~ ~~shall require~~ each member of the pool to participate equally in the purchase and replacement of ~~all~~ alcoholic beverages ~~and the replacement of all alcoholic beverages~~ shall purchase all such alcoholic beverages ~~be purchased~~ with money assessed and collected in advance from each member equally. ~~The assessment fee must be initially set by the club's by-laws or governing body and may be increased or decreased as needed by the club's governing body. Any increase or decrease in the assessment fee must be approved by the governing body and recorded in the club's minutes before the fee can be changed.~~ No money from any other source may be used to purchase or replace alcoholic beverages purchased for use under a ~~the~~ pool equal assessment system.

(b) ~~The holder of a private club registration permit may elect to operate under a pool replacement system by which a designated percentage of daily service charges collected for the service of alcoholic beverages is set aside to replace alcoholic beverages served to club members and their guests, and to temporary membership card holders. The percentage must initially be set by the club's by-laws or governing body and may be increased or decreased as needed by the club's governing body. Any increase or decrease in the percentage must be approved by the governing body and recorded in the club's minutes before the percentage can be changed. No money from any other source~~

may be used to purchase or replace alcoholic beverages purchased for use under a pool replacement system.

~~(c) [(b)]~~ Each holder of a private club registration permit operating under the pool system using either equal assessments or a replacement percentage shall prepare a record showing separately the pool assessments or replacement funds collected from the membership ~~[each member]~~ and the disbursements of these collections for purchases of alcoholic beverages.

~~(d) [(e)]~~ ~~The~~ ~~[Each]~~ holder of a private club registration permit or a ~~[and]~~ private club exemption certificate permit may purchase wine only from ~~[only]~~ the holder of a local distributor's permit.

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 May 25, 2016.

TRD-201602578

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489

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PART 4. TEXAS DEPARTMENT OF  
LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING  
AND BUILDINGS

16 TAC §70.30

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 70, §70.30, regarding the Industrialized Housing and Buildings program.

The proposed amendment is to implement Senate Bill 1264 (S.B. 1264), 84th Legislature, Regular Session (2015), which amended the Occupations Code, Chapter 1202, to change a size limitation affecting the regulation of industrialized housing and buildings. The proposed amendment is necessary to reflect the change in law made by S.B. 1264, which took effect September 1, 2015.

The proposed amendment to §70.30 reflects the change in statute made by S.B. 1264 that expands the applicability of the industrialized housing and buildings rules to include structures up to four stories or 60 feet in height from the previous limitation of three stories or 49 feet in height.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rule. The proposed amendment does not impose new fees or other expenses or cost to persons electing to construct or build industrial housing and buildings to the new heights or maximum number of floors. There is no estimated gain or loss in revenue to the state as a result of enforcing or administering the proposed rule.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendment is in effect, the public

will benefit by the rules acknowledging that the statute provides for having access to larger industrialized housing and buildings.

There will be no anticipated economic effect on small and micro-businesses that are required to comply with the rule as proposed. Any impact that may occur would be a direct result of the statutory change made by S.B. 1264 and not a result of this proposed rule.

Since the agency has determined that the proposed amendment will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Chapters 51 and 1202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposal.

#### §70.30. Exemptions.

(a) The scope of this chapter is limited by Chapter 1202; accordingly, it does not apply to:

(1) - (3) (No change.)

(4) any residential or commercial structure which is in excess of four [~~three~~] stories or 60 [49] feet in height;

(5) - (7) (No change.)

(b) (No change.)

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 May 25, 2016.

TRD-201602540

Brian E. Francis

Deputy Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 463-8614



## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES

## AND INSTRUCTORS FOR QUALIFYING EDUCATION

### 22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.64, Content Requirements for Qualifying Real Estate Courses, in Chapter 535, General Provisions.

The amendments are proposed to provide consistency and better quality in Real Estate Marketing qualifying courses and are recommended by the Commission's Education Standards Advisory Committee.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be better educated license holders and therefore greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

#### §535.64. Content Requirements for Qualifying Real Estate Courses.

(a) (No change.)

(b) Elective qualifying courses. To be approved by the Commission, the following elective qualifying courses must contain the content outlined below:

(1) Property Management, which shall contain the following topics, the units of which are outlined in the PROP-M-0, Qualifying Real Estate Course Approval Form, Property Management, hereby adopted by reference:

(A) Professional Property Management - 120 minutes;

(B) Feasibility of Property Management - 90 minutes

(C) Marketing Plan - 60 minutes;

(D) Management Operations - 130 minutes;

(E) Owner Relations - 120 minutes;

(F) Market Analysis and Management of Housing - 95 minutes;

(G) Leases - 100 minutes;

- (H) Tenant Relations - 115 minutes;
- (I) Federal, State and Local Laws - 230 minutes;
- (J) Maintenance and Construction - 90 minutes;
- (K) Commercial Property Management - 150 minutes;
- (L) Risk and Environmental Issues - 110 minutes; and
- (M) Safety and Security Issues for Property Managers and Staff - 90 minutes;

(2) Real Estate Marketing, which shall contain the following topics, the units of which are outlined in the REM-0, Qualifying Real Estate Course Approval Form, Property Management, hereby adopted by reference:

- (A) Real Estate Marketing - 80 minutes;
- (B) The Marketing Concept - 80 minutes
- (C) Marketing Research and Data Analysis - 150 minutes;
- (D) Prospecting and Target Marketing - 80 minutes;
- (E) Technology and Online Marketing - 100 minutes;
- (F) Social Media Marketing - 120 minutes;
- (G) Product and Pricing Strategies - 180 minutes;
- (H) Compensation Models - 60 minutes;
- (I) Characteristics of a Successful Sales Agent - 150

minutes;

- (J) Understanding Clients - 90 minutes;
- (K) Negotiating and Selling Skills - 120 minutes;
- (L) Steps to Executing Agreements - 50 minutes;
- (M) State and Federal Laws - 90 minutes; and
- (N) Ethics and Real Estate Professionalism - 150 min-

utes;

(3) [(2)] other than Property Management, meet the requirements of §1101.003 of the Act; or

(4) [(3)] Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to:

- (A) repair-related contract forms and addenda;
- (B) inspector and client agreements;
- (C) inspection standards of practice and standard inspection report form;
- (D) tools and procedures;
- (E) electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations); and
- (F) structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

(c) - (d) (No change.)

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 May 24, 2016.  
TRD-201602515

Kerri Lewis  
General Counsel  
Texas Real Estate Commission  
Earliest possible date of adoption: July 10, 2016  
For further information, please call: (512) 936-3092



## PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

### CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

The Texas Board of Veterinary Medical Examiners (Board) proposes amendments to §573.10, concerning Supervision of Non-Veterinarians, §573.14, concerning Alternate Therapies, §573.15, concerning Use of Ultrasound in Diagnosis, §573.29, concerning Complaint Information, §573.41, Use of Prescription Drugs, §573.44, Compounding Drugs, §573.45, Extra-Label or Off-Label Use of Drugs, §573.51, Rabies Control, §573.52, Veterinarian Patient Record Keeping, §573.53, Equine Dental Provider Patient Record Keeping, §573.65, Proof of Acceptable Continuing Education, and §573.69, Conditions Relative to License Suspension.

In general, the purpose of these amendments to 22 TAC Chapter 573 is to implement changes resulting from the Board's review of the chapter under Texas Government Code §2001.039. The notice of intention to review the chapter was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8814). No comments were received in response to the notice. The notice of the adopted rule review was published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2180).

Overall, the proposed amendments make clarifications and technical corrections.

The amendment to §573.10 serves to make all items in the list parallel. The amendments to §§573.14, 573.15, and 573.41 conform the term "veterinarian-client-patient relationship" to its appearance in the Veterinary Licensing Act. The amendment to §573.29 clarifies what is required on a licensee's notice to clients about complaint information. The amendments to §573.44 and §573.45 conform the term "food-producing animals" to its appearance in the Veterinary Licensing Act. The amendment to §573.51 modernizes the language of the rule.

The amendments to §573.52 and §573.53 will reflect the original intent of the rule to require a veterinarian or an equine dental provider to maintain patient records for a minimum of five years from the date of the last treatment. The amendments to §573.65 are technical corrections as is the amendment to §573.69.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rules are in effect there are no fiscal implications for state government. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rules as proposed. Ms. Oria has further determined that the amendments to the rules will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be that

the rules in Chapter 573 are clearer for licensees, the public, and Board staff.

Ms. Oria has determined that for the first five-year period the proposed rules are in effect, there will be no additional costs to persons or small businesses who are required to comply with the rules. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendments to the rules from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to [vet.board@veterinary.texas.gov](mailto:vet.board@veterinary.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

## SUBCHAPTER B. SUPERVISION OF PERSONNEL

### 22 TAC §§573.10, 573.14, 573.15

The amendments to 22 TAC §§573.10, 573.14, and 573.15 are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which states that the Board shall adopt rules to protect the public; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

#### §573.10. *Supervision of Non-Veterinarians.*

(a) - (e) (No change.)

(f) A non-veterinarian shall not perform the following health care services:

(1) surgery;

(2) invasive dental procedures except as allowed for licensed equine dental providers under §573.19 of this title, and as allowed for licensed veterinary technicians under subsection (d)(1) of this section;

(3) diagnosis and prognosis of animal diseases and/or conditions;

(4) prescribing drugs and appliances; or

(5) initiation of [~~initiate~~] treatment without prior instruction by a veterinarian, except in an emergency without expectation of compensation.

(g) - (k) (No change.)

#### §573.14. *Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.*

(a) (No change.)

(b) Treatment using animal chiropractic and other forms of MSM. Animal chiropractic and other forms of MSM may only be performed by the following.

(1) A licensed veterinarian. Animal chiropractic and MSM may be performed by a licensed veterinarian under the following conditions:

(A) a valid veterinarian-client-patient [~~veterinarian/client/patient~~] relationship has been established as defined in the Act;

(B) an examination has been made by the licensee to determine that animal chiropractic/MSM will not likely be harmful to the patient; and

(C) the licensee obtains as a part of the patient's permanent record a signed acknowledgment by the owner or other caretaker of the patient that animal chiropractic or MSM is considered by Texas law to be an alternate therapy.

(2) A non-veterinarian employee or an independent contractor. A non-veterinarian employee or an independent contractor may perform these procedures on an animal under the direct or general supervision of the veterinarian if the conditions in paragraph (1)(A) - (C) of this subsection have been met.

(3) An individual to whom the exceptions of the Act, §801.004, apply.

(c) (No change.)

#### §573.15. *Use of Ultrasound in Diagnosis or Therapy.*

(a) - (b) (No change.)

(c) Use of ultrasound by persons who are not licensed veterinarians.

(1) For diagnostic purposes. A person who is not a licensed veterinarian may perform ultrasonography on an animal for diagnostic purposes only if: the person administering the ultrasound is doing so at the request of a licensed veterinarian; the veterinarian has established a veterinarian-client-patient [~~veterinarian/client/patient~~] relationship; and it is the veterinarian who uses the ultrasonography to make a diagnosis.

(2) For therapeutic purposes. A person who is not a licensed veterinarian may perform ultrasonography on an animal for therapeutic purposes only if a veterinarian has: established a veterinarian-client-patient [~~veterinarian/client/patient~~] relationship; made a diagnosis; prescribed ultrasonics as a treatment; and the person administering the ultrasound is doing so at the specific request of a licensed veterinarian.

(d) Prohibited acts. Any person who uses ultrasound on animals in a manner inconsistent with this rule shall be in violation of this rule and the Texas Veterinary Licensing Act.

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 May 25, 2016.

TRD-201602658

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 305-7563



## SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

### 22 TAC §573.29

The amendment to 22 TAC §573.29 is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(c), which states that the Board shall adopt rules to protect the public; and §801.203, which states that the Board by rule shall establish methods by which consumers and service recipients are notified of how to direct a complaint to the Board.

§573.29. *Complaint Information and Notice to Clients.*

(a) A licensed veterinarian or licensed equine dental provider shall provide an effective way to inform clients and other visitors to the premises, clinic or hospital of how to file complaints with the Board. The licensee must provide:

(1) the following specific address: Texas State Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942;

(2) the Board's telephone number [numbers]: (512) 305-7555; fax number: (512) 305-7556; and

(3) a toll-free complaint information number: 1-800-821-3205.

(b) Acceptable forms of providing the information in subsection (a) of this section may include a:

(1) written notice form, with print size of at least 14 point, prominently displayed in the area of each clinic or hospital that is most frequented by the public;

(2) brochure available in the area of each clinic or hospital that is most frequented by the public; or

(3) statement on each written bill, invoice or receipt.

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 May 27, 2016.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



## SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

### 22 TAC §§573.41, 573.44, 573.45

The amendments to 22 TAC §§573.41, 573.44, and 573.45 are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public.

§573.41. *Use of Prescription Drugs.*

(a) It is unprofessional conduct for a licensed veterinarian to prescribe, administer, dispense, deliver, or order delivered any prescription drug without first having established a ~~veterinarian-client-patient~~ [veterinarian/client/patient] relationship and determined that such prescription drug is therapeutically indicated for the health and/or well-

being of the animal(s). Prescription drugs include all controlled substances in Schedules I - V and legend drugs which bear the federal legends, recognized as such by any law of the State of Texas or of the United States.

(b) It shall be unprofessional conduct and a violation of the rules of professional conduct for a licensed veterinarian to prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person prescription drugs that are not necessary or required for the medical care of animals, or where the use or possession of such drugs would promote addiction thereto. Prescription drugs are defined in subsection (a) of this section.

(c) A licensed veterinarian prescribing, administering, dispensing, delivering, or ordering delivered any prescription drug must comply with the laws, including all rules, of both the United States and the State of Texas, including but not limited to Chapter 483 of the Texas Health and Safety Code.

§573.44. *Compounding Drugs.*

(a) - (d) (No change.)

(e) Compounding for Food-]Producing Animals.

(1) For animals intended for human consumption, a veterinarian must establish an extended withdrawal interval for the compounded product sufficient to ensure food safety and may not compound from any drugs prohibited for use in food-]producing animals. The withdrawal period must be supported by scientific information, and the veterinarian shall note the method used to determine the withdrawal interval in the patient records.

(2) A veterinarian shall not compound or order a drug compounded if the compounded drug results in violative food residue, or any residue that may present a risk to public health.

(3) Compounding from a human drug for use in food-producing animals is not permitted if an approved animal drug can be used for compounding.

(4) Veterinarians shall ensure that procedures are in place to maintain the identity of treated animals, and shall note those procedures in the patient records.

(f) (No change.)

§573.45. *Extra-Label or Off-Label Use of Drugs.*

(a) - (c) (No change.)

(d) Extra-Label Drug Use in Food-Producing Animals.

(1) For animals intended for human consumption, a veterinarian must establish an extended withdrawal interval sufficient to ensure food safety. The withdrawal period must be supported by scientific information, and the veterinarian shall note the method used to determine the withdrawal interval in the patient records.

(2) A veterinarian shall not prescribe an extra-label drug in a manner that will result in violative food residue, or any residue that may present a risk to public health.

(3) Veterinarians shall ensure that procedures are in place to maintain the identity of treated animals, and shall note those procedures in the patient records.

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 May 27, 2016.

TRD-201602718

Loris Jones  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
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For further information, please call: (512) 305-7563



## SUBCHAPTER F. RECORDS KEEPING

### 22 TAC §§573.51 - 573.53

The amendments to 22 TAC §§573.51, 573.52, and 573.53 are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public.

#### §573.51. Rabies Control.

(a) - (c) (No change.)

(d) A veterinarian who ceases the practice of veterinary medicine shall deliver to the local health authority all duplicate rabies vaccination certificates issued by the veterinarian within the preceding five-year period. A veterinarian who sells or leases his or her practice to another veterinarian may transfer duplicate rabies certificates with the records of the practice which are transferred to a new owner.

#### §573.52. Veterinarian Patient Record Keeping.

(a) (No change.)

(b) Maintenance of Patient Records.

(1) Patient records shall be current and readily available for a minimum of five years from [the anniversary date of] the date of last treatment by the veterinarian.

(2) A veterinarian may destroy medical records that relate to any civil, criminal or administrative proceeding only if the veterinarian knows the proceeding has been finally resolved.

(3) Veterinarians shall retain patient records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(4) Patient records are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to the client's animals.

(5) If the veterinarian discontinues his or her practice, the veterinarian may transfer ownership of records to another licensed veterinarian or group of veterinarians only if the veterinarian provides notice consistent with §573.55 of this title (relating to Transfer and Disposal of Patient Records) and the veterinarian who assumes ownership of the records shall maintain the records consistent with this chapter.

(c) (No change.)

#### §573.53. Equine Dental Provider Patient Record Keeping.

(a) (No change.)

(b) Maintenance of Patient Records.

(1) Patient records shall be current and readily available for a minimum of five years from [the anniversary date of] the date of last treatment by the equine dental provider.

(2) Patient records are the responsibility and property of the equine dental provider, provided however, that equine dental providers

shall give copies of records to the owner or caretaker authorizing treatment of the patient at the time of treatment, and shall provide copies of records to the supervising veterinarian on request, within 15 business days of the request.

(3) An equine dental provider may destroy medical records that relate to any civil, criminal or administrative proceeding only if the equine dental provider knows the proceeding has been finally resolved.

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

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TRD-201602719

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



## SUBCHAPTER G. OTHER PROVISIONS

### 22 TAC §§573.65, §573.69

The amendments to 22 TAC §573.65 and §573.69 are proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.307 which states that the Board may adopt rules relating to continuing education.

#### §573.65. Proof of Acceptable Continuing Education.

(a) Acceptable Continuing Education.

(1) Continuing Education hours shall be acceptable if they relate to clinical matters. For veterinary licensees, continuing education hours shall be acceptable if they relate to practice management.

(2) Acceptable continuing education hours shall be earned by:

(A) veterinary licensees and licensed veterinary technicians attending meetings sponsored or co-sponsored by the American Veterinary Medical Association (AVMA), AVMA's affiliated state veterinary medical associations and/or their continuing education organizations, AVMA recognized specialty groups, regional veterinary medical associations, local veterinary medical associations, and AVMA-accredited veterinary medical colleges and veterinary technician programs;

(B) equine dental provider licensees attending meetings sponsored or co-sponsored by the International Association of Equine Dentistry;

(C) veterinary licensees taking correspondence courses that require the licensee to take a test at the conclusion of the course and yield a certificate of completion;

(D) all licensees participating in verifiable, monitored on-line and video programs or other telecommunication discussions that yield a certificate of completion and meet the following minimum standards:

(i) Inclusion of the following interactive experiences:

(I) direct, two-way verbal communication between attendees and the instructor at all times;

(II) direct, two-way verbal communication between attendees at all times; and

(III) visual communication with the instructor;

(ii) The ability to document active participation by attendees through:

(I) verbal interaction and software documentation; and

(II) the use of real time on-line surveys that promote audience interaction and document the attendance and engagement of the participants;

(E) all licensees' self study, through any form of continuing education from which the licensee does not receive a certificate of completion, including reading articles in professional journals or periodicals, listening to audio tapes or CD's or viewing video tapes or similar devices that transmit a video image; or

(F) any other methods approved by the Executive Director and a Board member appointed by the Board president, by an advisory committee appointed by the Board president, or approved for veterinary licensees and licensed veterinary technicians by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB).

(b) - (c) (No change.)

#### §573.69. *Conditions Relative to License Suspension.*

If a Board disciplinary action is taken against a licensee that results in the suspension of a license for a specified period of time, the Board shall identify specific conditions (or prohibitions) relative to the suspension. The conditions (or prohibitions) should be clearly stated as part of the negotiated settlement or Board order. The following guidelines will be utilized when specifying the conditions of a license suspension.

(1) - (6) (No change.)

(7) A disciplined licensee [Licensee] shall abide by the Board's order and conform to all laws, rules, and regulations governing the practice of veterinary medicine and equine dentistry in Texas.

(8) (No change.)

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 May 27, 2016.

TRD-201602720

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 305-7563



## 22 TAC §573.82

The Texas Board of Veterinary Medical Examiners (Board) proposes new §573.82, concerning Laser Therapy.

Texas Occupations Code §801.151(c)(2) requires the Board to adopt rules to ensure that alternate therapies, including laser therapy, are performed only by a veterinarian or under the supervision of a veterinarian. New §573.82 is proposed to meet that statutory requirement.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no fiscal implications for state government. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that the Board's expectations regarding the use of laser therapy are clearly set out.

Ms. Oria has determined that for the first five-year period the proposed rule is in effect, there will be no increase in costs to persons or small businesses who are required to comply with the rule. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to [vet.board@veterinary.texas.gov](mailto:vet.board@veterinary.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The new rule is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public and to ensure that laser therapy is performed only by a veterinarian or under the supervision of a veterinarian.

No other statutes, articles or codes are affected by the proposal.

#### §573.82. *Laser Therapy.*

(a) Definition. For the purpose of this rule, Laser Therapy is an acceptable therapy through the use of laser or IPL device radiation for the purpose of diagnosis, therapy, or treatment in the practice of veterinary medicine.

(b) Use of Laser Therapy in the treatment of animals. A licensed veterinarian may perform or prescribe Laser Therapy after a valid veterinarian-client-patient relationship has been created in accordance with the Act and Board Rules. An LVT or non-veterinarian employee of a veterinarian may perform Laser Therapy under the general supervision of the veterinarian if the other conditions within this subsection (b) have been met. The veterinarian and his or her employees performing Laser Therapy must be in compliance with all other relevant federal and Texas laws and rules. The veterinarian and his or her employee(s) performing Laser Therapy must comply with the accepted safety standards for use of lasers in health care for animals.

(c) Standard Used in Determining Appropriate Use of Laser Therapy. If the Board receives a complaint against a licensee about treatment involving the use of Laser Therapy, investigation of the complaint may include opinions from other licensees who use Laser Ther-

apy in their treatment of animals. However, veterinarians who practice Laser Therapy shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances, including the type of practice, by average members of the veterinary medical profession in good standing in the locality or geographic community in which they practice, or in similar communities.

(d) Other Board Rules Not Preempted. Nothing in this rule shall remove or limit in any way the applicability of other rules of the Board as they apply to the practice of veterinary medicine.

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 May 25, 2016.

TRD-201602656

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 305-7563



## CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

### SUBCHAPTER B. STAFF

#### 22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) proposes amendments to §577.15, concerning the Fee Schedule.

In accordance with Senate Bill 195, passed during the 84th Legislative Session, the amendment increases the renewal fee for certain veterinary licenses by \$7.85. Senate Bill 195 transfers the Texas Prescription Program (TPP) from the Department of Public Safety to the Texas State Board of Pharmacy (TSBP) and authorizes the Board to collect a fee in an amount sufficient to cover the cost of administering the TPP. Fees collected for the purpose of administering TPP are transferred to the TSBP.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, the fiscal implications for state government are no more than the changes in the fee increase listed in the rule. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that the Board is compliant with the funding obligation set out in Senate Bill 195.

Ms. Oria has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses who are required to comply with the rule are no more than the fee increase listed in the rule. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to [vet.board@veterinary.texas.gov](mailto:vet.board@veterinary.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter. The amendment is also proposed under the authority of Texas Occupations Code 554.006, as amended by Senate Bill 195, which authorizes the Board to increase fees for the purpose of funding the TPP.

No other statutes, articles or codes are affected by the proposal.

§577.15. *Fee Schedule.*

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration of its functions. Other variable fees exist, including but not limited to costs as described in §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule.

Figure: 22 TAC §577.15

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

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 7. MEMORANDA OF UNDERSTANDING

##### 30 TAC §7.102

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §7.102.

Background and Summary of the Factual Basis for the Proposed Rule

The Memorandum of Understanding (MOU) between the Texas State Soil and Water Conservation Board (TSSWCB or Board) and TCEQ became effective on June 9, 1997 (See §7.102). A Letter of Agreement (LOA) regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on animal feeding operations (AFOs) with a certified water quality management plan (WQMP) and dry poultry litter op-

erations became effective on August 24, 2007. Changes to the MOU are necessary to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the LOA into the MOU. To update the MOU, the TSSWCB initiated rulemaking for 31 TAC §523.5 on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). During the TSSWCB comment period no comments were received. On January 21, 2016, the TSSWCB adopted the amendment to 31 TAC §523.5 (Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality), specifically adopting the MOU and making the rule effective (41 TexReg 1253). This rulemaking proposes to repeal the current MOU in §7.102 and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

#### Section Discussion

The proposed amendment to §7.102 changes the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and adopts by reference the MOU adopted by the TSSWCB in 31 TAC §523.5.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rule is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The original MOU between the agencies became effective June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are also necessary to incorporate applicable conditions of the LOA into the MOU. The proposed amendment would replace the LOA.

The proposed rule does not meet the definition of a major environmental rule because the proposed rule only explains existing agency responsibilities rather than creates substantive requirements to protect the environment. The intent of the rule is merely to clarify and explain jurisdiction of the respective agencies. Because the intent of the rule does not create or require actions for the purpose of protecting the environment or reducing risks to human health from environmental exposure, the proposed rule is not an environmental rule. Additionally, the proposed rule does not meet the definition of a major environmental rule because it is not anticipated that the proposed rule will adversely affect in a

material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rule merely explicates jurisdiction of the respective agencies and does not impose new requirements. Finally, the proposed rule action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Therefore, the commission concludes that the proposed rule does not meet the definition of a major environmental rule. The commission invites comment on the Draft Regulatory Impact Determination. Comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The proposed rulemaking would substantially advance this stated purpose by providing one reference point interpreting the jurisdiction of the respective agencies. Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of public or private real property because the proposed rule does not affect real property. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The proposed rule merely clarifies and explains jurisdiction of the respective agencies. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

#### Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule would implement an MOU between the TSSWCB and TCEQ. The original MOU became effective on June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to incorporate applicable conditions of the LOA into the MOU and to update the MOU to reflect TCEQ's current statutory name as well as the TSSWCB and TCEQ's current procedures for coordinating jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs.

The TSSWCB initiated rulemaking to update the MOU on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register*. During the TSSWCB comment period, no comments were received. On January 21, 2016, the TSSWCB adopted the amendment, specifically adopting the MOU and making the rule effective. This rulemaking proposes to repeal the current MOU in §7.102

and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Incorporating existing procedures for coordinating the jurisdictional authority, program responsibilities, and the procedural mechanisms for point and nonpoint source pollution programs through the repeal of the current MOU and adopting by reference the full text of the revised MOU, is not expected to have any fiscal impact for the agency or any other unit of state or local government.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be updated rule for the coordination between the TSSWCB and TCEQ and continued safeguarding of the state's water quality.

The proposed rule is not anticipated to result in fiscal implications for businesses or individuals. Incorporating existing procedures for coordinating the jurisdictional authority, program responsibilities, and the procedural mechanisms for point and nonpoint source pollution programs through the repeal of the current MOU and adopting by reference the full text of the revised MOU, is not expected to have any fiscal impact for any business or individual.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule imposes no new requirements or regulations on small or micro-businesses and imposes no new costs.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect and is intended to enhance the public health, safety, environmental, and economic welfare of the state.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on July 12, 2016, at 10:00 a.m., Building E, Room 201S,

at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Public Comment

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-020-007-OW. The comment period closes July 15, 2016. Copies of the proposed rule-making can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Kerry Niemann, Planning & Implementation Section, (512) 239-0483.

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.104, concerning Memoranda of Understanding (MOUs), which authorizes the commission to enter into MOUs and adopt them as rules with other state agencies. Additionally, the amendment is proposed under TWC, §5.103 concerning Rules and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendment implements 31 TAC §523.5.

*§7.102. Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality [Natural Resource Conservation Commission].*

[(a)] The regulations of this section adopt by reference 31 TAC §523.5 (relating to Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality) as adopted and published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1253). [This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.]

[(1) Whereas, the Texas State Soil and Water Conservation Board, here within called the Board, is the state agency with the primary responsibility for activities relating to agricultural and silvicultural nonpoint source (NPS) pollution abatement; and]

[(2) Whereas, the board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on matters relating to agricultural and silvicultural nonpoint source pollution abatement; and]

[(3) Whereas, for purposes of this MOU, the board is responsible for NPS pollution abatement activities on all agricultural and

silvicultural land as defined by Senate Bill (SB) 503, Texas 73rd State Legislature; and]

[(4) Whereas, the board has established and implemented a water quality management plan certification program, in accordance with SB 503 of the Texas 73rd State Legislature for agricultural and silvicultural lands; and]

[(5) Whereas, the Texas Natural Resource Conservation Commission here within known as the commission; is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and]

[(6) Whereas, the commission has been designated as the lead agency for the Federal Clean Water Act, §319 program administered by the EPA; and]

[(7) Whereas, the commission shall coordinate all its activities related to this MOU with the board; and]

[(8) Whereas, consistent with the intent of Federal Clean Water Act, §319, the board and the commission are committed to the development and implementation of a coordinated NPS pollution program for the State; and]

[(9) Whereas, for the purpose of this MOU, the commission is responsible for the enforcement of all point source and NPS pollution regulations, including that on agricultural and silvicultural lands; and]

[(10) Whereas, consistent with Texas law and public policy, the board and commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and]

[(11) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:]

[(b) The Texas Natural Resource Conservation Commission agrees to:]

[(1) Administer, for the State, the Federal Clean Water Act, §319 grant program for NPS pollution. The commission will be responsible for coordinating the preparation of grant work programs.]

[(2) Execute cooperative agreements and associated amendments, and grant awards and contracts. The commission will be responsible for monitoring implementation of work programs and providing EPA with necessary financial and programmatic reporting information for non-agricultural/silvicultural surface and ground water work program elements.]

[(3) Implement the provisions of the EPA-approved Federal Clean Water Act, §319 management programs for non-agricultural/silvicultural surface and ground water NPS pollution.]

[(4) Complete, under current administrative procedures, all projects and programs for which grant funds have been awarded, under Federal Clean Water Act, §319. All future projects and programs implementing the EPA-approved Federal Clean Water Act, §319 management program for agricultural/silvicultural NPS pollution, and supported by §319 federal grants, will be administered by the board via a separate grant with EPA.]

[(5) Develop and maintain state guidance for all NPS pollution abatement projects other than agricultural or silvicultural NPS pollution projects as described by this MOU and SB 503.]

[(6) Coordinate with the board those compliance and enforcement actions relative to agricultural and silvicultural pollution.]

[(7) Provide to the board all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.]

[(8) Provide the board with access to the commission's electronic database for all current agricultural waste management plans.]

[(9) Investigate and/or monitor compliance of all animal feeding operations (AFO), as defined under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations); other than those covered by subsection (e)(12) of this section.]

[(10) In response to a general complaint, investigate a facility to determine whether a permit or written authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) is required of the facility. If problems are documented or conditions exist which have the potential to adversely impact the environment, the facility owner or operator will have the option of being referred to the board for the purpose of obtaining a certified water quality management plan or obtaining authorization under Chapter 321 of this title from the commission. If the owner or operator of a facility requests referral to the board in order to obtain a certified water quality management plan, the commission will send the board all pertinent documentation within five working days of the investigation.]

[(11) Retain the responsibility for pursuing any enforcement action related to a violation of a commission rule or order which occurred prior to the facility operator/owner obtaining a certified water quality management plan.]

[(12) Pursue appropriate enforcement action in accordance with commission rules against any person referred in accordance with subsection (e)(10) of this section.]

[(c) The Texas State Soil and Water Conservation Board agrees to:]

[(1) Serve as the recipient of grants from EPA for agricultural and silvicultural NPS pollution projects as described in this MOU and SB 503 and funded through Federal Clean Water Act, §319.]

[(2) Coordinate directly with the EPA on matters relating to programmatic and financial issues of agricultural and silvicultural projects funded by the board through separate grants from EPA under Federal Clean Water Act, §319. Notify the commission in writing on any decision made that results in a change in the programmatic or financial status of a project.]

[(3) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the board by the Federal Clean Water Act, §319. Reports will be submitted in accordance with EPA requirements.]

[(4) Develop and maintain state guidance for agricultural or silvicultural NPS pollution as described by this MOU and SB 503.]

[(5) Provide to the commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the NPS Management Plan.]

[(6) Process citizen complaints related to agricultural and silvicultural NPS pollution in a manner that is consistent with the practices and standards of the commission.]

[(7) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural NPS pollution project/program activities as negotiated with EPA.]

[(8) Develop and maintain a current electronic database to track and document the proceedings of all water quality management plans and corrective action plans. Data recorded will include, but not be limited to, the identification of applicant(s), date of application for each plan, and approval date of each plan.]

[(9) Provide the commission with access to the board's electronic database for all water quality management plans. Software and equipment necessary to facilitate electronic transfer of data should be compatible with that of the commission.]

[(10) Refer to the commission for possible enforcement action any complaint or violation related to a certified water quality management plan for an AFO, a law or rule relating to agricultural or silvicultural nonpoint source pollution for which the board has determined that the necessary corrective action has not been taken. The board, upon referral, shall provide the commission documentation, including but not limited to, any original documents or "certified copies" of the original documents and hard copies of all photographs, sample analyses, correspondence, records and other documents relating to the complaint.]

[(11) Provide the commission with documentation (board rules, policies, guidance, etc.) for development, supervision, and monitoring of individual certified water quality management plans.]

[(12) Investigate complaints and monitor compliance of all AFOs operating under a certified water quality management plan or any facility covered by law or board rule relating to agricultural or silvicultural nonpoint source pollution.]

[(13) Investigate any complaint received by the board to determine whether such a facility will need to obtain authorization from the commission. Those facilities which are determined to require authorization from the commission under Chapter 321 of this title (relating to Control of Certain Activities by Rule) will be referred to the commission within five working days from the date of investigation. If it is determined that the potential for a water quality violation exists at a facility that does not need authorization under Chapter 321 of this title, and the facility owner/operator does not implement a corrective action plan or does not file an application for a certified water quality management plan to resolve the complaint within 45 days of notification of the investigation outcome, the board shall automatically refer the facility to the commission for possible enforcement action, written authorization, or a permit.]

[(14) Refer to the Commission for possible enforcement action, complaints which were initially resolved by an agreement to develop a site specific certified water quality management plan for the involved facility and for which the facility owner/operator has not signed such a plan within 90 days of the date their request for planning assistance was approved by the Soil and Water Conservation District.]

[(15) Refer to the Commission for possible enforcement any complaint received for which there has been an immediate impact to aquatic life. Any investigation by the Board of a complaint related to an AFO holding a certified water quality management plan and for which a violation is documented that causes a situation in which exposure of contaminants to the air, water or land is affecting human health and safety, or will cause serious impact to the environment unless immediate actions are taken, shall be automatically referred to the Commission for possible enforcement action.]

[(d) Both parties agree to:]

[(1) Work together to refine the existing process for screening and prioritization of project proposals to be funded under Federal Clean Water Act, §319.]

[(2) Coordinate efforts in the development and submission of an annual work program to EPA for Federal Clean Water Act, §319, funding.]

[(3) Maintain each party's existing level of effort required by the EPA for the implementation of §319 programs/projects.]

[(4) Communicate and coordinate directly with each other and the EPA on matters relating to program/project planning and implementation of NPS pollution activities/projects funded by Federal Clean Water Act, §319.]

[(5) Provide required reports to the EPA on NPS pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.]

[(6) Meet semi-annually to review and discuss the state's NPS water quality program and to refine agency coordination mechanisms.]

[(7) Work together to develop criteria for the development of water quality management programs that satisfy the state water quality standards as established by the Commission.]

[(8) Comply with all relevant state and federal statutes and procedures, and grant conditions, including financial audits, data quality assurance and quality control, and progress reports.]

[(9) Cooperate on activities related to the implementation of the "Texas State Management Plan for Agricultural Chemicals in Ground Water."]

[(e) General conditions:]

[(1) Term of MOU. The term of this MOU shall be from the effective date until termination.]

[(2) Notice of Termination. Any party may terminate this MOU upon a 90 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of the other agency can this MOU be modified.]

[(3) Cooperation of Parties. It is the intention of the board and the commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.]

[(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.]

[(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective agency as follows: Texas Natural Resource Conservation Commission, Attn: \_\_\_\_\_, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: \_\_\_\_\_, P.O. Box 658, Temple, TX 76503-0658.]

[(6) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories ac-

knowledge that they are acting under proper authority from their governing bodies.]

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 May 26, 2016.

TRD-201602663

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 239-2613



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §745.8561 and §745.8608 in Chapter 745, concerning Licensing. The purpose of the new rules is to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that was organized by Texas CASA (Court Appointed Special Advocates); On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

One of the changes related to normalcy includes a definition for the "reasonable and prudent standard". The changes to Chapter 745 clarify how the reasonable and prudent parent standard will be used by CCL during investigations and when imposing an enforcement action.

Rule §745.8561 clarifies that CCL will use the reasonable and prudent parent standard when conducting an investigation of a designated person or foster parent that is alleged to have inappropriately allowed a child to participate in a childhood activity or denied a child access to a childhood activity.

Rule §745.8608 clarifies that CCL will not take enforcement actions against a General Residential Operations (GRO) or Child-Placing Agency (CPA) when a designated person or foster parent appropriately uses the reasonable and prudent parent standard when determining whether a child will be allowed to participate in a childhood activity.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Ms. Subia also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the safety of children in care and the quality of their care will be improved by integrating the use of "reasonable and prudent parent standard" into Chapter 745. There will be no effect on small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

Ms. Subia has determined that the proposed new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to [CCLRules@dfps.state.tx.us](mailto:CCLRules@dfps.state.tx.us). Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-543, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

##### DIVISION 5. ABUSE AND NEGLECT

###### 40 TAC §745.8561

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

*§745.8561. When will Licensing use the "reasonable and prudent parent standard" in conducting an investigation of a child-placing agency or general residential operation?*

We will use the "reasonable and prudent parent standard" when we investigate whether:

(1) A child-placing agency or general residential operation was deficient in a standard, rule, or other law because a foster parent or designated person:

(A) Allowed a child to participate in a childhood activity; or

(B) Denied a child access to a childhood activity or activities; or

(2) A foster parent or designated person breached a duty in §745.8559 of this title (relating to What is neglect?) by allowing a child to participate in a childhood activity.

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

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Trevor Woodruff

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: July 10, 2016

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



## SUBCHAPTER L. REMEDIAL ACTIONS

### DIVISION 1. OVERVIEW OF REMEDIAL ACTIONS

#### 40 TAC §745.8608

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

*§745.8608. How will Licensing implement the "reasonable and prudent parent standard" when determining whether to impose an enforcement action against a child-placing agency or general residential operation?*

We will not impose an enforcement action against a child-placing agency or general residential operation based on the conduct of a foster parent or designated person who appropriately followed the reasonable and prudent parent standard when determining whether a child will be allowed to participate in a childhood activity.

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

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Trevor Woodruff

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## CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.685, 748.863, 748.881, 748.931, 748.1003, 748.1339, and 748.4701; and new §§748.701, 748.703, 748.705, 748.707, 748.709, 748.868, 748.882, and 748.944, in Chapter 748, concerning Minimum Standards for General Residential Operations. The purpose of the new rules and amendments is to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy and for clarity and consistency. Both S.B. 1407 and the federal law require that normalcy requirements apply to General Residential Operations (GROs).

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that were organized by Texas CASA (Court Appointed Special Advocates); On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

A summary of the changes related to normalcy include: (1) creating an independent Normalcy Division in Chapter 748 to clarify and highlight the issues and make the rules related to normalcy easier to find; (2) clarifying that children must participate in childhood activities, including unsupervised childhood activities (activities that are away from and not supervised by the operation) as much as possible; (3) defining "normalcy" and the "reasonable and prudent parent standard"; (4) listing items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; (5) clarifying who will make decisions regarding whether a child may participate in a childhood activity; (6) clarifying that a child's participation in childhood activities must be discussed during service planning meetings; (7) clarifying that each GRO must designate one or more persons to make these normalcy decisions for a child; (8) clarifying which persons may be designated to make normalcy decisions; (9) requiring two hours of pre-service training regarding normalcy for certain employees; (10) requiring that two hours of normalcy training be included in the mandated annual training for all caregivers; and (11) providing a list of curriculum components that must be included in the general pre-service and annual normalcy training.

New definitions for "childhood activities" and "unsupervised childhood activities" are being added to §748.43 of this title (relating to What do certain words and terms mean in this chapter?). Since there will be many other changes to definitions in §748.43 in response to the comprehensive review of Chapter 748, it is anticipated that the definition changes will be proposed at the July 2016 DFPS Council Meeting and subsequently published in the *Texas Register*. However, for purposes of

understanding these proposed changes the proposed §748.43 definitions are as follows: (1) childhood activities--activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §748.705 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities; and (2) unsupervised childhood activities--childhood activities that a child in care participates in away from the operation and the caregivers. Childhood activities that an operation sponsors, conducts, or supervises are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

In addition, some minor changes related to normalcy are being made to the Chapter 748 rules relating to service planning and children's rights. Since there are other more significant changes being made to the service planning and children's rights rules, those rules are also being proposed in a different set of rules that will also make changes to Chapter 748 and be published in the same issue of the *Texas Register*.

Finally, there are some additional rule review changes not related to normalcy that are being proposed in these rules, including: (1) requiring that trauma informed care training be included in the mandated general pre-service training for all caregivers; (2) requiring that two hours of trauma informed care training be included in the mandated annual training for all caregivers; and (3) updating the language and numbering of tables for consistency and ease of understanding.

A summary of the changes follows:

The amendment to §748.685: Clarifies that a caregiver must: (1) be aware of a child's special supervision needs; and (2) provide, arrange, or confirm an appropriate method of transportation for an unsupervised childhood activity. The amendment also moves and revamps the current subsection (d) to new Division 6, Normalcy.

New §748.701 defines "normalcy."

New §748.703 states that: (1) children must participate in childhood activities, including unsupervised childhood activities, as much as possible; and (2) service planning meetings must discuss normalcy for the child.

New §748.705: (1) defines the "reasonable and prudent parent standard"; and (2) lists the items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity.

New §748.707 states that: (1) a GRO must designate at least one person to make decisions regarding a child's participation in childhood activities; (2) when making these decisions the designated person must follow the reasonable and prudent parent standard; and (3) the service plan may not require prior approval of the parent before the designated person may consent to a child's participation in childhood activities.

New §748.709 requires: (1) caregivers hired after August 31, 2016, to receive either a two hour pre-service training or annual training regarding normalcy before the caregiver may be a designated person that makes decisions regarding a child's partic-

ipation in childhood activities; (2) a designated person to work at the same location where the child resides and be knowledgeable of the child's current needs and history; and (3) the name of each designated person to be documented on the face sheet of the child's record.

The amendment to §748.863 requires two additional hours of pre-service training regarding normalcy for child care administrators, professional level service providers, treatment directors, and case managers.

New §748.868 provides an exemption to the requirement of two additional hours of pre-service training regarding normalcy for child-care administrators, professional level service providers, treatment directors, and case managers when the individuals have been trained on normalcy within the last 12 months.

The amendment to §748.881: (1) adds water safety as a topic that is appropriate for general pre-service training; and (2) adds trauma informed care and normalcy as required components for general pre-service training.

New §748.882 lists the curriculum components that must be included in the pre-service training regarding normalcy.

The amendment to §748.931: (1) requires that the mandatory annual training for caregivers and professional level service providers, treatment directors, and case managers who do not hold a relevant professional license must include two hours of training specific to trauma informed care; (2) requires that the mandatory annual training for caregivers, any designated persons, and professional level service providers, treatment directors, and case managers who do not hold a relevant professional license must include two hours of training specific to normalcy; and (3) clarifies the language and adds numbering to be more consistent throughout the rule and to make it easier to read.

New §748.944 requires: (1) the annual training regarding normalcy to include the curriculum components that are required in §748.882 of this chapter; and (2) subsequent training to further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented.

The amendment to §748.1003 clarifies the language of this rule and deletes an outdated cite.

The amendment to §748.1339: (1) requires a designated person to be involved in the development of the initial service plan; and (2) clarifies that a child that is verbal and developmentally able to participate must be invited to participate in the development of the child's service plan; and the service planning meeting must include discussions regarding the child's participation in childhood activities.

The amendment to §748.4701 clarifies the language of this rule and deletes an outdated cite.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for each of the first five years that the amendments and new rules will be in effect, there will not be costs or revenues to state or local government as a result of enforcing or administering the amendments and new rules.

Ms. Subia also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the amendments and new rules will be that the safety of children in care and the quality of their care will be improved by integrating normalcy and trauma informed care into the minimum standards. There is an anticipated adverse

impact on businesses, including small and micro-businesses, which must comply with the proposed rule changes. GROs will be impacted. The DFPS 2014 Annual Report and Data Book states that there are 239 GROs operating in Texas. There is no anticipated economic cost to persons who are required to comply with the proposed rule changes, other than the persons who have a financial stake in a GRO.

Licensing has identified six proposed rules in Chapter 748 as potentially having an adverse fiscal impact on GROs. The rules are discussed herein.

The size of the GRO and the number of residents that each operation has varies significantly. A few GROs have hundreds of residents; others GROs have 20 to 50 residents, while others have even fewer residents. Given this variation, it is not possible to project the fiscal impact to each GRO; however, it is possible to project an average "unit cost" for certain types of activities that are newly required by the new and amended rules.

The fiscal impact to GROs primarily results from additional staff time needed to

(1) attend new pre-service training regarding normalcy; and (2) update and develop curriculum.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail herein, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some GROs.

For GROs, the staff time required to comply with the standards will impact case managers, professional level service providers, treatment directors, and the child-care administrators. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of GRO staff, as follows (actual salaries paid to staff by a GRO may be greater or less than the averages used for these projections):

Case Managers - The 2016 average salary for Foster and Adoptive Development (FAD) Workers (Child Protective Services (CPS) Specialists I - V) was used to determine the salary costs for case managers because it is assumed they perform the functions most similar to those performed by case managers. The Fiscal Year (FY) 2016 average salary for a FAD Worker is \$43,768 per year or \$21.04 per hour.

Professional Level Service Providers and Treatment Directors - The 2016 average salary for CPS Foster and FAD Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the professional level service providers and treatment directors, because it is assumed they perform functions similar to those performed by professional level service providers and treatment directors. The FY 2016 average salary for a FAD Supervisor is \$52,071 per year or \$25.03 per hour.

Child-Care Administrator - The 2016 average salary for CPS Regional Directors was used to determine the salary costs for the child-care administrator, because it is assumed that this position functions in a similar capacity to that of a child-care administrator. The FY 2016 average salary for a CPS Regional Director is \$93,862 per year or \$45.13 per hour.

Fiscal Impact for Proposed §748.709: The new rule requires new caregivers to have either a two hour pre-service or annual training regarding normalcy before the caregiver may be a desig-

nated person that makes decisions regarding a child's participation in childhood activities. Any costs for annual training is noted in the "Fiscal Impact for Proposed §748.931 and §748.941." Licensing is assuming that most GROs will not designate new caregivers as a person that makes decisions regarding a child's participation in childhood activities. However, in some instances GROs may want to designate new caregivers as a person that makes decisions regarding a child's participation in childhood activities, for example in cottage homes. Licensing is assuming that most GROs provide substantially more than the required pre-service training hours, and in these situations CCL is assuming two additional hours of pre-service training regarding normalcy can be incorporated into the current pre-service training. Therefore, Licensing does not anticipate any costs regarding this new rule.

Fiscal Impact for Proposed §748.863: Revisions to §748.863 add requirements for pre-service training regarding normalcy for GRO administrators, professional level service providers, treatment directors, and case managers. The proposed change to this rule requires two new hours of pre-service training regarding normalcy. The training must be completed before the employee can be a designated person that makes decisions regarding a child's participation in childhood activities or within 90 days of hire, whichever occurs earlier. There are two costs associated with the increase in hours for general pre-service training regarding normalcy for GRO employees: the hourly wages paid to the training participants while attending a class and instruction costs.

The average cost of group caregiver training offered by local resource and referral agencies is \$20 per hour. Licensing assumed that training for these staff is 25% more expensive than training caregivers given that the level of expertise of trainers is usually higher. As such, the cost of instruction for pre-service training on normalcy would be \$25 per hour per employee trained.

The training will only apply to new staff. But the cost to train these staff for two hours is estimated as follows:

(1) Child Care Administrators - \$140.26 {(hourly wage of \$45.13 x 2 hours of training) + (\$25.00 x 2 hours of instruction costs)};

(2) Professional Level Service Providers and Treatment Directors - \$100.06 {(hourly wage of \$25.03 x 2 hours of training) + (\$25.00 x 2 hours of instruction costs)}; and

(3) Case Managers - \$92.08 {(hourly wage of \$21.04 x 2 hours of training) + (\$25.00 x 2 hours of instruction costs)}.

Fiscal Impact for Proposed §748.881: Revisions to this rule require two new curriculum components, normalcy and trauma informed care, to be included in a GRO's general pre-service training that is mandated for caregivers and employees. There is no increase in training hours, so the only fiscal impact relates to the update of the curriculum. The costs for developing the pre-service training curriculum regarding normalcy is included in "Fiscal Impact for Proposed §748.882." The costs for developing the annual training curriculum, regarding trauma informed care, is included in "Fiscal Impact for Proposed §748.931 and §748.944." It should be a minimal impact to incorporate portions of the pre-service training curriculum regarding normalcy and the annual training curriculum regarding trauma informed care into the general pre-service training. In addition, it will be a one-time cost. It is anticipated that a professional level service provider or an employee similarly situated will spend an average of 10 to 20 hours to incorporate the curriculum for each topic into the general pre-service training. Therefore, the one-time cost to update the curriculum regarding these two topics will be between ap-

proximately \$500.60 {\$25.03 (the hourly wage of a professional level service provider) x 10 hours x 2 topics} and \$1,001.20 20 {\$25.03 (the hourly wage of a professional level service provider) x 20 hours x 2 topics} per GRO. (Note: GROs that currently contract with DFPS have been required, by contract since 2012, to train their staff on trauma informed care.)

Fiscal Impact for Proposed §748.882: This new rule specifies the curriculum components that must be included in the pre-service training regarding normalcy for the child care administrator, professional level service providers, treatment director and case managers. The costs for sending these persons to training was discussed in "Fiscal Impact for Proposed §748.863." However, if a GRO determines they want to provide this training in-house, then the instruction costs noted above (\$50 per each employee for the two hours of training) would no longer be applicable, but the normalcy training curriculum would need to be developed. The training for normalcy must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. It is anticipated that a professional level service provider or some employee similarly situated will spend an average of 60 hours (30 hours x 2 training hours) to 100 hours (50 hours x 2 training hours) to develop the curriculum. Therefore, the one-time cost to update the curriculum regarding normalcy will be between approximately \$1,501.80 {\$25.03 (the hourly wage of a professional level service provider) x 60 hours} and \$2,503.00 {\$25.03 (the hourly wage of a professional level service provider) x 100 hours} per GRO.

Fiscal Impact for Proposed §748.931 and §748.944: Revisions to §748.931 require that the currently mandated annual training for caregivers and employees of GROs must now include training regarding trauma informed care and normalcy. Revisions to §748.944 list the curriculum components that must be included in the required annual normalcy training. There is no increase in the number of annual training hours required; there is only the requirement that training must include two hours of training specific to normalcy and two hours of training specific to trauma informed care. Since there is only a change in the content of the training, there is no fiscal impact in the delivery of the training because the GRO already pays for or delivers the annual training for the same number of training hours. If the GRO is currently paying for outside annual training, then there are no additional costs for the GRO. However, there is a fiscal impact when a GRO actually delivers the training and must now develop a new curriculum for trauma informed care and may need to modify the normalcy curriculum that was developed for the pre-service training regarding normalcy, see "Fiscal Impact for Proposed §748.882." The training for trauma informed care must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. To modify the pre-service normalcy curriculum, CCL is estimating it will take 20 hours. It is anticipated that a professional level service provider or some employee similarly situated will spend an average of 80 hours {(30 hours) to develop the trauma informed care curriculum x 2 training hours} + 20 hours to modify the normalcy curriculum} to 120 hours {(50 hours to develop the trauma informed care curriculum x 2 training hours) + 20 hours to modify the normalcy curriculum} to develop/modify the curriculum for these two topics. Therefore, the one-time cost to develop/modify the curriculum regarding trauma informed care and normalcy will be between approximately \$2,002.40 {\$25.03 (the hourly wage of a professional level service provider) x 80 hours} and \$3,003.60 {\$25.03 (the hourly wage of a professional level service provider) x 120 hours} per GRO. (Note: GROs that currently contract with DFPS

have been required by contract since 2012 to train their staff on trauma informed care.)

Regulatory Flexibility Analysis - As previously noted, the amendments and new rules apply to the approximately 239 GROs. Of the 239 GROs, it is estimated that only 25% (or 60 GROs) are small businesses, and 16% (or 38 GROs) are micro-business. These 60 small businesses and 38 micro-businesses fall within the statutory definition, because only these businesses are for-profit businesses.

The projected economic impact on small and micro-businesses was addressed for GROs in the foregoing section of the preamble. As noted herein, with the widely varying number of children cared for by GROs, the fiscal impact of these rules to particular GROs will vary, with the total dollar impact likely to be greater for GROs that serve a larger number of children and less for GROs that serve a smaller number of children.

DFPS did not consider any alternatives to the rule amendments being proposed that require additional training for normalcy and trauma informed care to ameliorate the impact on GROs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes is to ensure the health and safety of children and to improve their quality of care, regardless of the size of the GRO. However, DFPS did consider different training times for normalcy, but decided a shorter training time frame was not adequate, and a longer time frame was excessive.

Ms. Subia has determined that the proposed amendments and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@DFPS.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-543, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

## SUBCHAPTER E. PERSONNEL DIVISION 5. CAREGIVERS

### 40 TAC §748.685

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.685. *What responsibilities does a caregiver have when supervising a child or children?*

(a) - (b) (No change.)

(c) Caregivers must:

(1) Be aware of the children's habits, interests, and any special needs, including any special supervision needs;

(2) - (6) (No change.)

(d) [A child may be away from the operation and caregivers in order to participate in an unsupervised activity, as appropriate based on the caregiver's assessment of the child and the supervision instructions in the child's service plan. The caregiver's assessment of the child must include the factors outlined in subsection (b) of this section. The child's service plan must specify if unsupervised activities are allowed, and under what circumstances. The unsupervised activity may extend into sleeping hours.] If a child is participating in an unsupervised childhood activity, the caregiver must:

(1) - (2) (No change.)

(3) Provide, arrange, or confirm an appropriate method of transportation to and from the activity;

(4) [(3)] Give the child a way to contact the caregiver in an emergency; and

(5) [(4)] Be available to respond if the child contacts the caregiver and needs immediate assistance.

(e) - (f) (No change.)

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

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Trevor Woodruff

General Counsel

Department of Family and Protective Services

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



## DIVISION 6. NORMALCY

### 40 TAC §§748.701, 748.703, 748.705, 748.707, 748.709

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.701. What is "normalcy"?

Normalcy is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for

children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

§748.703. Are children in care required to participate in childhood activities?

(a) Children in care must participate in childhood activities, including unsupervised childhood activities, as much as possible.

(b) Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions on how normalcy for the child can be achieved, and discussions, if applicable, regarding a child's refusal to participate in childhood activities. The child's service plan must specify whether there are any restrictions on the child's participation in these activities and whether the activities may extend into sleeping hours.

§748.705. What is the "reasonable and prudent parent standard"?

(a) The reasonable and prudent parent standard is the standard of care that a parent of reasonable judgment, skill, and caution would use to maintain the health, safety, and best interest of the child and encourage the emotional and developmental growth of the child.

(b) When using the reasonable and prudent parent standard, a person must take into consideration the following when deciding whether a child may participate in childhood activities:

(1) The child's age and level of maturity;

(2) The child's cognitive, social, emotional, and physical development level;

(3) The child's behavioral history and ability to participate in a proposed activity;

(4) The child's overall abilities;

(5) Whether the activity is a normal childhood activity;

(6) The child's desires;

(7) The surrounding circumstances, hazards, and risks of the activity;

(8) Outside supervision of the activity, if available and appropriate;

(9) The supervision instructions in the child's service plan; and

(10) The importance of providing the child with the most normal family-like living experience possible.

§748.707. Who makes the decision regarding a foster child's participation in childhood activities?

(a) A General Residential Operation (GRO) must designate one or more persons to make decisions regarding a child's participation in childhood activities, except as otherwise provided in subsection (c) of this section.

(b) When making decisions regarding a child's participation in childhood activities, a designated person must follow the reasonable and prudent parent standard.

(c) The service plan may not require the prior approval of the parent before a designated person may consent to a child's participation in childhood activities. However, if the parent provides notice in advance that the child is prohibited from participating in a specific activity, a designated person must follow the parent's decision.

§748.709. Are there any restrictions on who can be a designated person that makes decisions regarding a child's participation in childhood activities?

(a) Caregivers hired after August 31, 2016, may not be a designated person that makes decisions regarding a child's participation in childhood activities until the caregiver completes either a two hour pre-service training regarding normalcy or the annual training specific to normalcy.

(b) A designated person that makes decisions regarding a child's participation in childhood activities must:

(1) Work at the location where the child resides; and

(2) Be knowledgeable about the child's current needs and history.

(c) The name of each designated person must be documented on the face sheet of the child's record.

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

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Trevor Woodruff

General Counsel

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## SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

### DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

#### 40 TAC §748.863, §748.868

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.863. *What are the pre-service hourly training requirements for caregivers and employees?*

(a) Caregivers and certain employees must complete the following training hours before the noted time frame:  
Figure: 40 TAC §748.863(a)

(b) (No change.)

§748.868. *Must I provide pre-service training regarding normalcy to a child-care administrator, professional level service provider, treatment director, or case manager who was previously employed by a residential child-care operation?*

(a) A child-care administrator, professional level service provider, treatment director, or case manager is exempt from completing the pre-service training regarding normalcy if the person:

(1) Has been employed by a residential child-care operation during the past 12 months;

(2) Has received training during the past 12 months on normalcy; and

(3) Can document that the training has been received.

(b) You must document the exemption factors in the appropriate personnel record.

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

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Department of Family and Protective Services

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



## DIVISION 4. GENERAL PRE-SERVICE TRAINING AND PRE-SERVICE TRAINING REGARDING NORMALCY

#### 40 TAC §748.881, §748.882

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.881. *What curriculum components must be included in the general pre-service training?*

The general pre-service training curriculum must include the following components:

(1) Topics appropriate to the needs of children for whom the caregiver will be providing care, such as developmental stages of children, fostering children's self-esteem, constructive guidance and discipline of children, water safety, strategies and techniques for monitoring and working with these children, and age-appropriate activities for the children;

(2) - (3) (No change.)

(4) Preventing the spread of communicable diseases; [~~and~~]

(5) The location and use of fire extinguishers and first-aid equipment;[-]

(6) Trauma informed care; and

(7) Normalcy.

§748.882. What curriculum components must be included in the pre-service training regarding normalcy?

The pre-service training regarding normalcy must include the following components:

(1) A discussion of the definitions of normalcy and the reasonable and prudent parent standard;

(2) The developmental stages of children, including a discussion of the cognitive, social, emotional, and physical development of children;

(3) Age appropriate activities for children, including unsupervised childhood activities;

(4) The benefits of childhood activities to a child's well-being, mental health, and social, emotional, and developmental growth;

(5) How to apply the reasonable and prudent parent standard to make decisions; and

(6) The child's and the caregiver's responsibilities when participating in childhood activities.

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

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Trevor Woodruff

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Department of Family and Protective Services

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## DIVISION 6. ANNUAL TRAINING

### 40 TAC §748.931, §748.944

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

*§748.931. What are the annual training requirements for caregivers and employees?*

(a) Caregivers and certain employees must complete the following training hours:

Figure: 40 TAC §748.931(a)

(b) (No change.)

*§748.944. What curriculum components must be included in the annual normalcy training?*

(a) The annual training regarding normalcy must include the curriculum components covered in the pre-service training regarding normalcy, see §748.882 of this title (relating to What curriculum components must be included in the pre-service training regarding normalcy?).

(b) Subsequent annual training regarding normalcy should further develop and refine an employee's knowledge and understanding or normalcy and how it should be implemented.

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

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## SUBCHAPTER G. CHILD/CAREGIVER

### RATIOS

#### 40 TAC §748.1003

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

*§748.1003. For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?*

(a) - (c) (No change.)

(d) [A child may be away from the operation and caregivers in order to participate in an approved unsupervised activity as outlined in §748.685(d) of this title (relating to What responsibilities does a caregiver have when supervising a child or children?);] A child does not count in the child/caregiver ratio while participating in an approved unsupervised childhood activity.

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

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SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE  
DIVISION 4. SERVICE PLANS

40 TAC §748.1339

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.1339. *Who must be involved in developing an initial service plan?*

(a) A service planning team must develop the service plan. The team must consist of:

(1) At least one of the child's current caregivers; [and]

(2) A person designated to make decisions regarding a child's participation in childhood activities; and

(3) [(2)] At least one professional level service provider who provides direct services to the child.

(b) (No change.)

(c) The child, if verbal and developmentally able to participate [as appropriate], and the parents must be invited to the meeting to develop the service plan, including discussions regarding the child's participation in childhood activities.

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

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SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE TRAFFICKING VICTIM SERVICES

DIVISION 5. CHILD/CAREGIVER RATIOS

40 TAC §748.4701

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.4701. *For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?*

(a) (No change.)

(b) A child does not count in the child/caregiver ratio while the child is away from the operation participating in an approved unsupervised childhood activity[; as outlined in §748.685(d) of this title (relating to What responsibilities does a caregiver have when supervising a child or 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.

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendment to §§749.43, 749.61, 749.305, 749.307, 749.421, 749.423, 749.425, 749.501, 749.503, 749.509, 749.513, 749.515, 749.535, 749.539, 749.551, 749.553, 749.571, 749.573, 749.577, 749.581, 749.585, 749.633, 749.635, 749.663, 749.667, 749.669, 749.673, 749.675, 749.679, 749.725, 749.761, 749.767, 749.801, 749.861, 749.867, 749.869, 749.881, 749.901, 749.933, 749.935, 749.937, 749.939, 749.941, 749.945, 749.1005, 749.1007, 749.1011, 749.1021, 749.1107, 749.1109, 749.1111, 749.1113, 749.1115, 749.1131, 749.1133, 749.1135, 749.1151,

749.1153, 749.1183, 749.1187, 749.1291, 749.1301, 749.1307, 749.1309, 749.1313, 749.1317, 749.1321, 749.1323, 749.1331, 749.1335, 749.1339, 749.1363, 749.1369, 749.1371, 749.1401, 749.1409, 749.1415, 749.1421, 749.1423, 749.1425, 749.1433, 749.1463, 749.1469, 749.1503, 749.1521, 749.1541, 749.1581, 749.1583, 749.1803, 749.1813, 749.1815, 749.1819, 749.1863, 749.1891, 749.1893, 749.1895, 749.1921, 749.1923, 749.1925, 749.1957, 749.1959, 749.1961, 749.2001, 749.2151, 749.2201, 749.2203, 749.2231, 749.2305, 749.2403, 749.2445, 749.2447, 749.2451, 749.2453, 749.2471, 749.2475, 749.2487, 749.2488, 749.2497, 749.2599, 749.2623, 749.2635, 749.2655, 749.2803, 749.2805, 749.2815, 749.2903, 749.2904, 749.2905, 749.2909, 749.2911, 749.2913, 749.2917, 749.2931, 749.2961, 749.3027, 749.3031, 749.3039, 749.3061, 749.3075, 749.3103, 749.3133, 749.3135, 749.3137, 749.3139, 749.4153, and 749.4259; repeal of §§749.101, 749.103, 749.105, 749.107, 749.131, 749.133, 749.161, 749.163, 749.331, 749.333, 749.335, 749.337, 749.339, 749.341, 749.343, 749.345, 749.347, 749.349, 749.351, 749.353, 749.355, 749.357, 749.359, 749.507, 749.531, 749.533, 749.601, 749.671, 749.681, 749.769, 749.771, 749.1003, 749.1523, and 749.2902; and new §§749.101, 749.103, 749.105, 749.107, 749.109, 749.111, 749.113, 749.115, 749.117, 749.119, 749.121, 749.123, 749.125, 749.127, 749.129, 749.131, 749.133, 749.135, 749.137, 749.139, 749.141, 749.151, 749.153, 749.161, 749.304, 749.529, 749.531, 749.533, 749.534, 749.769, 749.1003, 749.1312, 749.1336, 749.2902, and 749.3151, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies (CPA). The purpose of the amendments, new sections, and repeals is for Child Care Licensing (CCL) to be in compliance with Texas Human Resources Code (HRC) §42.042(b) which requires CCL to conduct a comprehensive review of all rules and minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 749.

During this review of standards, CCL's goal was to balance the concerns of child advocacy groups, child-placing agencies, foster parents, children, and biological parents to formulate standards that promote the safety of every child in care.

In preparation for the review of minimum standards, CCL conducted a web-based survey open to permit holders, caregivers, advocates, parents, and anyone in the general public interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 13 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about proposed changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received almost three hundred comments (for both Chapters 748 and 749) from stakeholders for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations that were then presented to a temporary workgroup. The temporary workgroup, comprised of 13 participants, including providers from child-placing agencies and general residential operations and representatives from Child Protective Services, Residential Contracts, and Licensing, met twice on December 16, 2015 and February 2, 2016. The workgroup reviewed and provided additional comments regarding the recommendations.

DFPS received some comments related to adoption services in the surveys and in the forums. After reviewing these comments and the related current minimum standards, DFPS decided to maintain the adoption minimum standards as they are currently written. However, DFPS will continue to look at minimum standard changes related to adoption over the next year to determine whether to propose any changes. To that end DFPS will hold workgroup meetings with providers and clients for further guidance on recommended changes.

This comprehensive review includes changes to over two hundred minimum standards. Some of the changes are minimal (e.g. changing the cite to a rule, or deleting a masculine pronoun), other changes are small but have more of an impact (e.g. changing the treatment service terminology of "mental retardation" to "intellectual disability"), and still other changes are more complex and will have a wider impact. Below is a broad overview of some of the different areas and types of changes that DFPS is proposing:

- (1) Updating definitions and treatment service types;
- (2) A rewrite and reorganization of the Divisions 1, 2, and 8 of Subchapter C, Organization and Responsibilities, relating to Permit Holder Responsibilities; Governing Body; and Policies and Procedures. The focus of the rewrite and the reorganization is to clarify:
  - (A) The plans, policies, and procedures that are required during the application process; and
  - (B) A CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities;
  - (3) Clarifying training requirements, for example:
    - (A) Only permitting 10 hours of non-required pre-service training to be carried over to use as annual training during the upcoming year; and
    - (B) Increasing the number of annual training hours that may come from self-instructional training from 1/3 to 1/2;
    - (4) Continuing to modify the rules to improve normalcy for children, for example:
      - (A) Changing the Children's Rights rule to make the rights easier to understand and find by modifying the language of some of the rights and listing the rights under seven different categories (e.g. Safety and Care, Living a Normal Life, Discipline, etc.);
      - (B) Requiring a child 14 and older to review and sign the child's service plan;
      - (C) Allowing more discretion by foster parents when monitoring the use of trampolines for older children; and
      - (D) Allowing more discretion by foster parents when monitoring swimming activities for older children who are competent swimmers;
      - (5) Clarify service planning requirements, for example:
        - (A) Increasing the time to complete a service plan from 40 days to 45 days;
        - (B) Permitting foster parent and parent notifications for a service planning meeting to come from other parties;
        - (C) Permitting multiple meetings to complete the service planning meeting requirements; and

(D) Permitting a single service plan to continue throughout the time a child is in residential care as long as the CPA completes a preliminary service plan at admittance and continues to review and update the plan;

(6) Strengthening the minimum standards when it is necessary for the safety of children, for example:

(A) Requiring older runaway children to be reported missing within two hours (this is already the requirement for younger children);

(B) Restricting the use of e-cigarettes or any kind of vapors; and

(C) Requiring transfer/closing summaries of foster homes to include a recommendation for verification in the future, including whether there would be any recommended limitations or restrictions on the verification; and

(6) Allowing more discretion by providers while still ensuring the safety of children, for example:

(A) Clarifying that electronic and digital signatures, including e-mail and electronic approvals, are appropriate;

(B) Shortening the experience requirements for child placement staff and child placement management staff;

(C) Clarifying that an emergency admission includes when a CPA has 72 hours to place a child; and

(D) Modifying the requirement of a face-to-face contact every 15 days for children with primary medical needs to "twice every month with no more than 20 days between visits".

The summary of the changes are:

The amendment to §749.43 clarifies the definitions by: (1) updating definitions; (2) deleting definitions that are not used in this chapter; (3) moving definitions from other subchapters that are used throughout the chapter (e.g. chemical restraint, corrective or adverse action, emergency medication, etc.); (4) adding and clarifying definitions regarding "normalcy" issues (e.g. childhood activities and unsupervised childhood activities); and (5) adding definitions to clarify "permit holder" and "governing body" (e.g. corporation or other type of business entity, owner, and partnership).

The amendments to §749.61 update the names and description of the types of treatment services to be consistent with the DSM-5.

The repeal of Subchapter C, Division 1, Permit Holder Responsibilities, rewrites and reorganizes Divisions 1, 2, and 8 of Subchapter C to clarify: (1) the plans, policies, and procedures that are required during the application process; and (2) a CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities.

New Subchapter C, New Division 1, Plans and Policies Required During the Application Process, creates a new division that will clarify the policies that are required during the application process.

Section 749.101 is repealed because: (1) portions of the rule are unnecessary or duplicative; and (2) the other requirements are moved to §745.243, new §749.101, new §749.103, new §749.105, new §749.139, new §749.153, §749.667, and §749.669.

New §749.101 clarifies the plans that are required for the application process by: (1) incorporating portions of repealed §749.101 and §749.163; and (2) adding a requirement that the operation plan must include a list of persons or officers and their titles that comprise the governing body, if applicable.

Section 749.103 is repealed because: (1) portions of the rule are unnecessary or duplicative; and (2) the other requirements are moved to new §749.153.

New §749.103 clarifies the policies that are required for the application process by accumulating a complete list and referencing the relevant minimum standard.

Section 749.105 is repealed and new §749.105 creates a new rule by: (1) including the content of the repealed version of this rule with non-substantive modifications; and (2) adding the written staffing plan requirements from repealed §749.601.

Section 749.107 is repealed and new §749.107 creates a new rule by: (1) including the content of the repealed version of this rule with non-substantive changes; and (2) adding conflict of interest policies from repealed §749.131 and §749.681.

New §749.109 includes the content from repealed §749.333 with non-substantive modifications to the rule.

New §749.111 includes the content from repealed §749.335 with non-substantive modifications to the rule.

New §749.113 includes the content from repealed §749.339 (except paragraph (18) which was moved to new §749.135) with non-substantive modifications to the rule.

New §749.115 includes the content from repealed §749.341 with non-substantive modifications to the rule.

New §749.117 includes the content from repealed §749.343 with non-substantive modifications to the rule.

New §749.119 includes the content from repealed §749.345 with non-substantive modifications to the rule; and deletes the section regarding "respective rights and responsibilities" because it is already included in new §749.121.

New §749.121 includes the content from repealed §749.347 with non-substantive modifications to the rule.

New §749.123 includes the content from repealed §749.349 with non-substantive modifications to the rule; and deletes subsection (a) because these standards are already required for all children, not just children receiving treatment services.

New §749.125 includes the content from repealed §749.351 with non-substantive modifications to the rule.

New §749.127 includes the content from repealed §749.353 with non-substantive modifications to the rule.

New §749.129 Includes the content from repealed §749.355 with non-substantive modifications to the rule.

Subchapter C, Division 2, Governing Body, is repealed to rewrite and reorganize Divisions 1, 2, and 8 to clarify: (1) the plans, policies, and procedures that are required during the application process; and (2) a CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities.

Section 749.131 is repealed because: (1) a grandfather clause is outdated and is no longer needed; (2) portions of the rule are

unnecessary or duplicative; and (3) the other requirements are moved to new §§749.107, 749.139, 749.151, and 749.161.

New §749.131: (1) includes the content from repealed §749.357 with non-substantive modifications to the rule; and (2) deletes paragraph (4) because the "plan for review of adoption plans" was confusing and duplicative. Adoption plans already have to be reviewed.

Section 749.133 is repealed and moves the content to new §749.153.

New §749.133 includes the content from repealed §749.359 with non-substantive modifications to the rule.

New §749.135 creates an independent abuse and neglect policy section that's content was derived from repealed §749.339(18).

New §749.137 includes the content from repealed §749.331(a) and (d) with non-substantive modifications to these subsections.

New §749.139 includes the content from repealed §749.331(b) with significant clarifications to explain how a CPA's plans, policies, and procedures must be adopted by a sole proprietor, partnership, or corporation.

New §749.141 clarifies that Licensing may cite standards in Division 1 for deficiencies after the application process is granted.

Subchapter C, New Division 2, Operational Responsibilities and Notifications, creates a new division that will clarify a CPA's operational responsibilities, including responsibilities for notifications to Licensing.

New §749.151 includes portions of the content from repealed §749.103 with significant modifications, including the combining of some paragraphs and the deletion of some paragraphs because they were unnecessary and/or duplicative.

New §749.153: (1) includes portions of the content from repealed §§749.103, 749.133, 749.507, and 749.681; (2) adds items to be consistent with new §749.101 and new §749.103; and (3) modifies the timeframes for notification to Licensing for consistency.

Section 749.161 is repealed and new §749.161 creates a new rule by: (1) incorporating portions of the content of the repealed version; (2) deleting portions of the content of the repealed version because it was unnecessary and duplicative; and (3) adding portions of the content from repealed §749.163 to new §749.161.

Section 749.163 is repealed and moves the content to two new rules: §749.101 and §749.161.

New §749.304 moves portions of the content from §749.305 to this new rule to clarify where the main and branch offices must be located, but this is a non-substantive change.

The amendment to §749.305 clarifies this rule by: (1) moving the location of the main and branch offices content to new §749.304; (2) deleting an outdated grandfather clause; and (3) modifying the language for clarity, including the caseload limits when offices share the same administrator and/or treatment director.

The amendment to §749.307 clarifies the language of the rule for consistency.

Subchapter C, Division 8, Policies and Procedures, is repealed and Division 9 is renumbered to Division 8.

Section 749.331 is repealed and the content of this rule is moved to four new rules: §§749.137, 749.139, 749.153, and 749.529. One subsection was deleted as unnecessary.

Section 749.333 is repealed and the content is incorporated into new §749.109.

Section 749.335 is repealed and the content is incorporated into new §749.111.

Section 749.337 is repealed and the content is incorporated into §749.1113, except subsection (c) is deleted because it was unnecessary and duplicative.

Section 749.339 is repealed and the content is incorporated into new §749.113, except paragraph (18) which is incorporated into new §749.135.

Section 749.341 is repealed and the content is incorporated into new §749.115.

Section 749.343 is repealed and the content is incorporated into new §749.117.

Section 749.345 is repealed and the content is incorporated into new §749.119.

Section 749.347 is repealed and the content is incorporated into new §749.121.

Section 749.349 is repealed and the content is incorporated into new §749.123.

Section 749.351 is repealed and the content is incorporated into new §749.125.

Section 749.353 is repealed and the content is incorporated into new §749.127.

Section 749.355 is repealed and the content is incorporated into new §749.129.

Section 749.357 is repealed and the content is incorporated into new §749.131.

Section 749.359 is repealed and the content is incorporated into new §749.133.

The amendment to §749.421 adds young adults to the list of adult clients; and clarifies the language of the rule to make it easier to understand.

The amendment to §749.423 clarifies that when informing adult clients of their rights, the: (1) information must be in writing; (2) procedures for making complaints to DFPS only relate to violations of minimum standards; and (3) information regarding other entities where complaints may be filed must include phone numbers and addresses.

The amendment to §749.425 clarifies the language of the rule to make it easier to understand.

The amendment to §749.501 clarifies that serious incidents are those incidents noted in §749.503.

The amendment to §749.503 clarifies several issues, including: (1) requiring a child death to be reported to law enforcement within one hour after the child's death, and reported to Licensing and the parents within two hours after the child's death; (2) making the language for "substantial physical injury" consistent with the new definition for that term; (3) requiring child-on-child physical abuse and sexual abuse to be reported when a CPA or foster parent becomes aware of it; (4) clarifying that a serious incident includes when law enforcement responds to an alleged incident at the foster home; (5) requiring the absence of a 13 year old or older from a foster home that cannot be located to be reported to Licensing, the parents, and law enforcement no

later than two hours from when the absence is discovered (Note: This is already the requirement for children younger than 13); (6) subsection (b) regarding foster parents reporting to the Hotline was deleted and moved to §749.509; (7) adding a subsection from repealed §749.507 stating medical incidents that don't rise to the level of a serious incident don't have to be reported to Licensing, but they must be documented; (8) adding language requiring a report to the Hotline if there is reason to believe an adult resident has been abused, neglected, or exploited; and (9) making the language in these sections consistent with the rest of the chapter.

Section 749.507 is repealed and the content is incorporated into new §749.153 and §749.503.

The amendment to §749.509 clarifies the rule to: (1) add the requirement that foster parents must report directly to the Hotline if an incident involves a child under their care, which is being moved from current §749.503; and (2) delete the requirement for reporting to Licensing in writing, because those issues are now included in new §749.153.

The amendment to §749.513 clarifies the language of the rule for consistency throughout the chapter.

The amendment to §749.515 clarifies that: (1) incident reports must be easily accessible to Licensing; and (2) deletes a subsection because it is unnecessary and duplicative.

New §749.529 incorporates the content from portions of repealed §749.331.

Section 749.531 is repealed and incorporates the content into new §749.531 and §749.533.

New §749.531 incorporates the content from portions of repealed §749.531 and §749.533 with non-substantive modifications.

Section 749.533 is repealed and the content is incorporated into new §749.531.

New §749.533 incorporates the content of repealed §749.531 with non-substantive modifications.

New §749.534 clarifies that electronic signatures, approvals by e-mail, and electronic approvals are allowed.

The amendment to §749.535 clarifies that no written summaries are required, and the records from the foster parents must be submitted within 15 days from the end of the month.

The amendment to §749.539 clarifies that disaster and emergency plans must be maintained at the main office, relevant branch office, or in a central administratively designated location.

The amendment to §749.551 clarifies that all active personnel records must be maintained at the main office or keep individual personnel records at the office where each person is working. In addition, the master list of active and archived personnel records must be kept at the main office and must include a notation of the location of those records.

The amendment to §749.553 clarifies: (1) that employees must sign a statement documenting that the employee has read the operational policies; (2) what must go into a personnel record regarding training; (3) deletes a signed statement requirement regarding the employee's training on abuse and neglect, because it has been clarified what must go into a personnel record regarding training; and (4) the name of the Hotline.

The amendment to §749.571 deletes an outdated and unnecessary cite to a rule.

The amendment to §749.573 clarifies that the master list of active client records must include a notation of the location of those records.

The amendment to §749.577 deletes the requirement that active child records must include the "date of each data entry and the name of the person who makes the data entry".

The amendment to §749.581 clarifies that archived client records must be maintained at the main office, the branch office that served the client, or in a central administratively designated location. In addition, the master list of archived client records must include a notation of the location of those records.

The amendment to §749.585 clarifies the language of the rule.

Section 749.601 is repealed and the content is incorporated into new §749.105(3).

The amendment to §749.633 deletes a confusing caveat in the rule.

The amendment to §749.635 adds to the responsibilities (or assignments) of a child-placing agency administrator to administer and manage the approved plans for evaluating the effectiveness of a CPA's system to comply with standards and the plan to investigate Minimum Standards.

The amendment to §749.663 clarifies that child placement staff have the responsibility for conducting and documenting foster home supervisory visits.

The amendment to §749.667 clarifies the language of the rule, and that child placement management staff must directly perform the responsibilities of the child placement staff, as appropriate.

The amendment to §749.669 clarifies the language of the rule, including making the "re-evaluated" language consistent throughout the chapter.

Section 749.671 is repealed and the content is incorporated into §749.43 to define "corrective and adverse action."

The amendment to §749.673 clarifies the qualifications chart for child placement staff by: (1) reducing the professional qualifications (years of experience) for: (A) Options 2 and 3 (now combined with Option 1 into New Option 1) from two years to one year; and (B) Option 4 (now Option 2) from three years to two years; (2) combining Options 1, 2, and 3 into New Option 1 because the professional qualifications are now the same; and (3) expanding the type of experience required for the New Options to include experience at a general residential operation, as a department conservatorship caseworker, or as a department adoptive home development worker; and the experience must be in conducting assessments, service planning, or case management duties; or (A) for New Option 1, one year of experience working under the direct supervision of child placement management staff; or (B) for New Option 2, two years of experience working under the direct supervision of child placement management staff.

The amendment to §749.675 clarifies the qualifications chart for child placement management staff by: (1) reducing the professional qualifications (years of experience) for: (A) Option 1 from two years to one year; (B) Options 2 and 3 (now combined into New Option 2) from three years to two years and four years to two years, respectively; and (C) Option 4 (New Option 3) from five years to three years; (2) combining Options 2 and 3 into

new Option 2 because the professional qualifications are now the same; (3) expanding the type of experience required for the New Options to include experience at a general residential operation, as department conservatorship caseworker, or as a department adoptive home development worker; and the experience must be in conducting assessments, service planning, or case management duties; and (4) modifying where the nine credit hours on family and individual function and interaction may come from. They may come from undergraduate OR graduate level courses.

The amendment to §749.679 adds a reference to clarify that while there is no specific caseload compliance requirements, §749.305 does have caseload limits for offices that share the same administrator and/or treatment director.

Section 749.681 is repealed and the content is incorporated into new §749.107.

The amendment to §749.725 updates treatment services terminology.

The amendment to §749.761 deletes a subsection regarding requirements for volunteers that provide short-term services through an organization and moves it to §749.767; deletes a masculine pronoun; and updates the name of the Hotline.

The amendment to §749.767 incorporates the content from §749.761 and clarifies that a CPA must determine that the program for a volunteer that provides short-term services through an organization is adequate to protect the health and safety of children.

Section 749.769 is repealed and the content is replaced with new §749.769 to clarify that no person may provide services to an agency if that person is on probation or parole or is performing community service through the courts because of a criminal activity. The prohibition applies to a person who meets the definition of a volunteer or any other person not compensated, including persons providing any type of service even if the person does not have unsupervised access to children in care.

Section 749.771 is repealed because it is outdated and does not appear to be used anymore.

The amendment to §749.801 moves the description of the acronym CEU to §749.935, which is the only place it is used; and clarifies the definition of "instructor-led training".

The amendment to §749.861 clarifies that for a caregiver that doesn't have current experience caring for a child with treatment needs, the CPA's prescribed caregiver experience regimen (which is already required) must now specifically include eight hours of observations and interactions with children receiving similar treatment services.

The amendment to §749.867 clarifies the language of the rule and deletes masculine pronouns.

The amendment to §749.869 clarifies that a qualified instructor for pre-service training must have adequate knowledge and experience in the topic to be delivered.

The amendment to §749.881 adds water safety as an appropriate curriculum topic for the general pre-service training as it relates to the needs of children for whom a caregiver will be providing care; and deletes normalcy in this rule because it is now a separate mandated two hour pre-service training.

The amendment to §749.901 adds a component to the pre-service training regarding emergency behavior intervention, which

will require addressing the circumstances when all de-escalation strategies fail.

The amendment to §749.933 clarifies the "within 12-months" language for when an employee's or caregiver's annual training must be completed.

The amendment to §749.935: (1) spells out the acronym CEU; (2) limits to 10 hours the amount of non-required pre-service training hours that may be carried over and counted for annual training hours; (3) clarifies that the "required" pre-service training hours may not be counted for annual training hours; and (4) increases from one-third to one-half the number of annual training hours that may come from self-instructional hours; and clarifying that no more than three of those self-instructional hours may come from reading materials.

The amendment to §749.937 clarifies that while Licensing does not approve or endorse training resources, the requirements for a CPA to ensure reliable training relevant to the population of children served applies to both: (1) employees and caregivers; and (2) instructor-led training and self-instructional training.

The amendment to §749.939 clarifies that transportation safety training must be instructor-led.

The amendment to §749.941 adds water safety and administration of medication as training topics appropriate for annual training; and deletes trauma informed care and normalcy in this rule because they are now mandated topics for annual training.

The amendment to §749.945 deletes masculine pronouns; and clarifies the psychotropic medication training that must be met.

Section 749.1003 is repealed and the content is incorporated into new §749.1003.

New §749.1003: (1) modifies the language of the rule to divide the children rights into seven categories (e.g. Safety and Care, Living a Normal Life, Discipline, etc.) to make the rights easier to understand and find; (2) changes the "right to be free from discrimination" to the "right to fair treatment" and deletes the laundry list of discrimination grounds; and (3) improves the readability of the rule overall.

The amendment to §749.1005 clarifies that a timely signed copy of the "CPS Rights of Children and Youth in Foster Care" will meet the Licensing requirements in this rule.

The amendment to §749.1007 clarifies that appropriate home schooling will meet the educational rights of a child.

The amendment to §749.1011 requires a reevaluation by child placement management staff when restrictions are imposed on a child's contact with siblings for more than 60 days (it is currently 90 days). The wording of this rule was also modified to be consistent with other re-evaluations in this chapter.

The amendment to §749.1021 clarifies that the list of the techniques that may not be used on a child is not an exhaustive list.

The amendment to §749.1107 deletes the requirement to document: (1) the child's birthplace; and (2) court orders establishing the managing conservator of the child.

The amendment to §749.1109 adds the Texas Family Code §32.203 requirement that in certain instances a child 16 years or older may sign a placement agreement for a transitional living program without the consent of the child's parent.

The amendment to §749.1111 clarifies that during orientation a child must be provided information on how to make complaints to

outside agencies and how to contact outside parties to a child's case.

The amendment to §749.1113: (1) adds the content of most of repealed §749.337 to provide parents with relevant policies; (2) deletes the requirement that parents must be able to determine whether a program is appropriate for a child and can meet the child needs; and (3) adds the policies and explanations that must be provided to a child that signs a placement agreement as specified in §749.1109.

The amendment to §749.1115 clarifies that one of the special needs that must be shared with caregivers is supervision needs; and the sharing of all special needs must be documented.

The amendment to §749.1131 clarifies that the admission assessment must be completed prior to admission.

The amendment to §749.1133: (1) deletes redundant phrases that are already clarified by a definition; and (2) clarifies that an assessment must establish how the needs of the child can be met.

The amendment to §749.1135: (1) allows any health care professional to evaluate whether foster parents have been trained to meet the needs of a child with primary medical needs and demonstrate competency; (2) deletes a supervision requirement, because it is already required to be reviewed for all children; and (3) updates the treatment services terminology, deletes a masculine pronoun, and corrects a cite to a rule.

The amendment to §749.1151 and §749.1153 deletes a masculine pronoun and changes an acronym in each rule.

The amendment to §749.1183 adds to the list of situations that constitute an emergency admission to include, "if you must place a child within 72 hours"; clarifies the wording of the rule; and deletes a masculine pronoun.

The amendment to §749.1187 makes the terminology for psychiatric evaluation, psychological evaluation, and psychosocial assessment consistent throughout the chapter.

The amendment to §749.1291: (1) clarifies that for all contacts with children in care at least half of them must occur in the foster home; and (2) changes the requirement for face-to-face contacts every 15 days for children with primary medical needs to "twice every month with no more than 20 days between visits".

The amendment to §749.1301 clarifies that the preliminary service plan addressing the immediate needs of the child must be completed within 72 hours; and an example of an immediate need is supervision requirements.

The amendment to §749.1307 clarifies that the initial service plan must be completed within 45 days (currently 40 days).

The amendment to §749.1309 updates the items that are needed for an initial service plan, including: (1) updating the psychiatric evaluation, psychological evaluation, and psychosocial assessment language; (2) deleting redundant phrases that are already included in the definitions; and (3) clarifying references and other language for consistency.

New §749.1312 clarifies that the service planning team may meet in one meeting, two or more meetings, or in separate meetings to discuss and develop a child's service plan, provided that each service planning team member is informed of the discussion and comments regarding the child's service plan that were made in each meeting.

The amendment to §749.1313 clarifies that notice to the parents and foster parents regarding the service planning meeting may be given by someone else as long as the CPA has documentation that the notice was given and was timely.

The amendment to §749.1317 updates treatment services terminology.

The amendment to §749.1321 requires all children 14 years and older to review and sign the initial service plan. If the child disagrees with the plan or refuses to sign it, this information must be documented.

The amendment to §749.1323 clarifies that the service plan must be implemented within 15 days (currently 10 days) after the date of the scheduled service planning meeting involving the parents, foster parents, and the child.

The amendment to §749.1331 updates treatment services terminology.

The amendment to §749.1335 removes the requirement to determine for children receiving treatment services whether the placement should continue, change the child's treatment service designation, transfer the child to a least restrictive setting, or refer the child to an inpatient hospital. This is being deleted because permanency goals should be considered for all children and are broader than this list.

New §749.1336 clarifies that a single service plan that continues throughout the time a child is in residential care is allowed as long as the CPA completes a preliminary service plan at admittance and complies with the review and update rules in this division.

The amendment to §749.1339 updates treatment services terminology.

The amendments to §§749.1363, 749.1369, and 749.1371 delete masculine pronouns in each rule.

The amendment to §749.1401 clarifies what has to be included in a child's record regarding a medical exam. The requirements for the "date of examination" and "procedures completed" are being deleted because these requirements will be in the results of the medical examination. There is also clarification regarding documenting the date and time of an injury or illness resulting in a medical exam.

The amendment to §749.1409 clarifies what has to be included in a child's record regarding a dental exam. The requirements for the "date of examination" and "procedures completed" are being deleted because these requirements will be in the results of the dental examination.

The amendment to §749.1415 clarifies the language of this rule.

The amendment to §749.1421 clarifies that the immunization requirements of the Department of State Health Services (DSHS) must be met, instead of referencing the HRC; and deletes a duplicative statement regarding a child's health passport meeting Licensing documentation standards.

The amendment to §749.1423 clarifies the exemptions and exceptions to the immunization requirements.

The amendment to §749.1425 clarifies the documentation requirements that are acceptable for an immunization record, including documentation of the name and address of the health-care professional (previously it only said RN) that administered the vaccine.

The amendment to §749.1433 corrects a cite to a rule.

The amendment to §749.1463 clarifies that these requirements only apply to the administration of prescription medication.

The amendment to §749.1469 adds a requirement to inform a child's physician of any non-prescription medication or supplement to make sure there are no contraindications with other medications.

The amendment to §749.1503 clarifies that for a child that is on a self-medication program the CPA/foster parents must ensure there is a system for reviewing the child's medication each day.

The amendment to §749.1521 clarifies the rule by: (1) removing the requirement to store medications "for external use only" separately from other medications; and (2) incorporating the content of repealed §749.1523 (the requirement to destroy outdated medication within 30 days) into this rule.

Section 749.1523 is repealed and the content is incorporated into §749.1521.

The amendment to §749.1541 changes this rule by: (1) replacing "vitamin" with "supplement", which has been defined in §749.43 as "vitamins, herbs, and any supplement labeled dietary supplement"; (2) clarifying that a medication record does not have to be updated immediately but "within 24 hours of administering medication"; (3) requiring the documentation of a non-prescription medication or supplement that is given to the child and how often the child receives the medication or supplement (no cumulative record is required); and (4) requiring documentation in the medical record of any prohibited supplement.

The amendment to §749.1581 clarifies the meaning of an "adverse reaction" to a medication; and adds a requirement to immediately report the reaction to the child's parent.

The amendment to §749.1583 clarifies the meaning of a medication "side effect"; and adds a requirement to immediately report serious side effects to the child's parent.

The amendment to §749.1803 clarifies that infant care items necessary for diaper changing must be kept out of the reach of children, but do not need to be in locked storage.

The amendment to §749.1813 clarifies the language in this rule to be consistent with the Day Care requirements.

The amendment to §749.1815 clarifies that a health-care professional's sleeping orders for an infant must be kept in the child's record.

The amendment to §749.1819 deletes a masculine pronoun.

The amendment to §749.1863 clarifies the language of the rule.

The amendment to §749.1891 clarifies that additional educational facilities or programs are allowed if approved by the child's service planning team. The justification and the approval must be kept in the child's record.

The amendment to §749.1893 clarifies: (1) that extracurricular activities must be determined by a reasonable and prudent parent standard; (2) that a caregiver must provide notice to the parent of the child of any scheduled ARD, IEP, or ITP meetings; and (3) acronyms.

The amendment to §749.1895 updates treatment services terminology and deletes a masculine pronoun.

The amendment to §§749.1921, 749.1923, and 749.1925 updates treatment services terminology in each rule.

The amendment to §749.1957 clarifies the language for prohibited discipline techniques to include not screaming at a child.

The amendment to §749.1959 changes the time from 30 days to 14 days that a foster parent may restrict a child's activities without a review by the child placement management staff or a treatment director.

The amendment to §749.1961 updates a cite to a rule.

The amendment to §749.2001 removes most of the definitions from this section and moves them to §749.43, because the terms that are being moved are used in more than this one subchapter.

The amendment to §749.2151 deletes a masculine pronoun.

The amendment to §749.2201 clarifies that a personal restraint must be monitored to make sure the restraint is being performed appropriately.

The amendment to §749.2203 deletes a masculine pronoun.

The amendment to §749.2231 clarifies that in an emergency behavior intervention (EBI), a child must have bathroom privileges "as needed".

The amendment to §749.2305 adds to the documentation requirements for an EBI to include: (1) the names of any witnesses to the EBI, including child witnesses in the home; and (2) the name of the medical provider, if medical treatment or assistance was obtained for the child.

The amendment to §749.2403 deletes an outdated grandfather clause.

The amendment to §749.2445 clarifies that only a prospective foster family's domestic violence history needs to be reported to Licensing, not all criminal history.

The amendment to §749.2447: (1) clarifies in paragraph (7) that all criminal history results must be assessed in relation to the whole home screening; (2) clarifies in paragraph (19) that persons supporting foster parents during an unexpected event or crisis situation must have a fingerprint-based criminal history check before acting as a caregiver; and (3) renumbers paragraphs (6), (7), (22), and (23) for ease in referencing these standards.

The amendment to §749.2451 deletes the outdated language of "attempts to interview". In the past some interviews of adult children were not mandated, but now all adult children must be interviewed.

The amendment to §749.2453 clarifies the foster home screening update requirements to be consistent with §749.2803, when new or temporary verifications are needed.

The amendment to §749.2471 deletes an unnecessary reference and updates a cite to a rule.

The amendment to §749.2475 adds to the background information that must be shared with other CPAs, including: (1) a plan to achieve compliance; and (2) adverse action plans.

The amendment to §749.2487 clarifies that the agreement between the foster parents and the CPA must be signed.

The amendment to §749.2488 adds the requirement to give verified foster parents copies of the CPA's policies concerning "the rights and responsibilities of the CPA and the foster parents", which was deleted from repealed §749.347(b).

The amendment to §749.2497 adds to the information that must be included in a transfer/closing summary: (1) any plan to achieve compliance or other development plan that was in place within the previous 12 months of the transfer/closing; (2) any adverse action plan; and (3) a statement of whether the CPA would recommend the foster home for verification in the future, including limitations or restrictions on the verification and the basis for the recommendation.

The amendment to §749.2599 clarifies terminology.

The amendment to §749.2623 clarifies that a CPA must inform a child of the plan for respite care before the CPA places the child in respite care.

The amendment to §749.2635 updates a cite to a rule.

The amendment to §749.2655 clarifies the notification requirements of certain changes in a foster home, including referencing a cite to the definition of "a major life change in the foster family" instead of repeating the definition in this rule.

The amendment to §749.2803 clarifies what changes affect a foster home's verification by: (1) deleting confusing terminology like "the conditions of a foster home", "is only valid until", and "prior to"; (2) making it consistent with the definition of "a major life change in the foster family" at §749.2805(a); and (3) making it more accurate and easier to understand.

The amendment to §749.2805 clarifies that a "major life change in the foster family" includes a significant change in a work schedule.

The amendment to §749.2815 clarifies that: (1) child placement staff must conduct the supervisory visits; (2) any significant change in finances is an issue related to the stress levels of foster parents that must be reviewed during supervisory visits; and (3) the names of all household members present at the supervisory visit must be documented.

Section 749.2902 is repealed and proposed as new to replace the current requirements for a health inspection with a new rule that mirrors §749.2903 (fire inspection/evaluation) and allow child placement management staff to conduct a health and safety evaluation using a DFPS checklist.

The amendment to §749.2903 clarifies that when a foster home changes a type of verification, then the foster home must meet the relevant fire safety measures required for the new type of foster home.

The amendments to §§749.2904, 749.2905, 749.2909, and 749.2911 make the language in this chapter regarding a "local health authority or state or local authority" consistent.

The amendment to §749.2913 clarifies that fire extinguishers must have a maintenance check once a year by a person qualified to inspect fire extinguishers.

The amendment to §749.2917 clarifies the language of the rule and deletes the requirement that ferrets must be vaccinated, because this is not required by the Health and Safety Code.

The amendment to §749.2931 clarifies that e-cigarettes and vaporizers, like tobacco products, are also prohibited.

The amendment to §749.2961 clarifies that the adult supervising a child that is using a weapon must be knowledgeable about the weapon.

The amendment to §749.3027 corrects a typographical error and deletes a masculine pronoun.

The amendment to §749.3031 clarifies that mattresses must not be on the floor.

The amendment to §749.3039 allows more discretion by the foster parents when monitoring the use of trampolines for older children.

The amendment to §749.3061 deletes subsection (a), because it is already noted in §749.3063(a)(1).

The amendment to §749.3075 clarifies the language of the rule and updates terminology.

The amendment to §749.3103 makes the language in this chapter regarding a "child passenger seat system" consistent.

The amendment to §749.3133 allows more discretion by the foster parents when monitoring swimming activities for older children who are competent swimmers; and deletes an outdated grandfather clause.

The amendment to §749.3135 allows more discretion by the foster parents when monitoring swimming activities for older children who are competent swimmers.

The amendment to §749.3137: (1) clarifies the chart by: (A) deleting the middle "children in the group" column, because the swimming ratio and supervising the number of children in the group were the same; (B) deleting the cite to §749.2563 and incorporating the requirement from that rule into the chart; and (C) lowering the swimming ratios for foster group homes from 8:1 to 6:1 to be consistent with the swimming ratios for foster family homes; (2) clarifies that subsection (b) always requires at least two adults to supervise four or more children if all four children are actually in the water; (3) clarifies subsection (d) to state that even if a lifeguard is counted in the swimming ratio, one caregiver must always be present and the lifeguard cannot be the only person counted in the swimming ratio; and (4) deletes language in subsection (e), because unsupervised childhood swimming activities will be made by foster parents using a reasonable and prudent parent standard.

The amendment to §749.3139 changes "water activities" to "swimming activities" to make the language in the chapter consistent.

New §749.3151 clarifies that the rules in this division do not apply to swimming activities away from the foster parents and the foster home.

The amendment to §749.4153 updates a cite to a rule.

The amendment to §749.4259 changes "therapy" to "counseling" to make the language in the chapter consistent.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that: (1) there will be clarification of the Minimum Standards for Child-Placing Agencies (CPAs); (2) DFPS will be in compliance with HRC §42.042(b); and (3) there will be a reduced risk to children. There is no anticipated economic cost to individual persons who are required to comply with the proposed sections.

There is no anticipated adverse impact on small or micro-businesses as a result of the proposed rule changes. The recom-

mended rule changes should not affect the cost of doing business; do not require the purchase of any new equipment or any increased staff time in order to comply; and while there are some new requirements, these requirements should not require additional costs to comply.

Ms. Subia has determined that the proposed amendments, repeals and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-553, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

## SUBCHAPTER B. DEFINITIONS AND SERVICES

### DIVISION 1. DEFINITIONS

#### 40 TAC §749.43

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

*§749.43. What do certain words and terms mean in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by one of the following regional accrediting entities:

(A) The Southern Association of Colleges and Schools; Commission on Colleges, a subdivision of the Southern Association of Colleges and Schools;

(B) The Middle States Association of Colleges and Schools; Commission on Higher Education, a component of the Middle States Association of Colleges and Schools;

(C) The New England Association of Schools and Colleges; Commission on Institutions of Higher Education, a subdivision of the New England Association of Schools and Colleges;

(D) North Central Association of Colleges and Schools; The Higher Learning Commission (formerly part of the North Central Association of Colleges and Schools);

(E) The Northwest Commission on Colleges and Universities;

(F) The Western Association of Schools and Colleges; Accrediting Commission for Senior Colleges and Universities, a subdivision of the Western Association of Schools and Colleges; or

(G) The Western Association of Schools and Colleges; Accrediting Commission for Community and Junior Colleges, a subdivision of the Western Association of Schools and Colleges.

~~{(2) Activity space--An area or room used for child activities.}~~

(2) ~~{(3)}~~ Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, socio-cultural background, and community setting.

(3) ~~{(4)}~~ Adoption record--All information received by the child-placing agency that bears the child's name or pertains to the child, including any information about the birth parents and adoptive parents, is considered to be part of the adoption record.

(4) ~~{(5)}~~ Adoptive home screening--Also known as a pre-adoptive home screening. A written evaluation, prior to the placement of a child in an adoptive home, of the:

(A) Prospective adoptive parent(s);

(B) Family of the prospective adoptive parents; and

(C) Environment of the adoptive parents and their family in relation to their ability to meet the needs of a child, and if a child has been identified for adoption, the needs of that particular child.

(5) ~~{(6)}~~ Adult--A person 18 years old or older.

(6) Adverse action--See corrective or adverse action.

(7) Babysitting--Temporarily caring for a child in foster care for no more than 12 consecutive hours.

(8) Caregiver--A caregiver:

(A) Is a person counted in the child/caregiver ratio for foster care services, including employees, foster parents, contract service providers, and volunteers, whose duties include direct care, supervision, guidance, and protection of a child in care. This includes any person that is solely responsible for a child in foster care. For example, a child-placement staff that takes a foster child on an appointment or doctor's visit is considered a caregiver;[-]

(B) Does not include babysitters, overnight care providers, or respite child-care providers unless they are:

(i) Verified foster parents;

(ii) Licensed foster parents; or

(iii) Agency employees;[-]

(C) Does not include a contract service provider who:

(i) Provides a specific type of service to your agency for a limited number of hours per week or month; [or]

(ii) Works with one particular child; or[-]

(iii) Is a nurse being reimbursed by Medicaid; and

(D) Does not include a person left alone momentarily with a child in care while the caregiver leaves the room.

(9) Certified fire inspector--Persons certified by the Texas Commission on Fire Protection to conduct fire inspections.

(10) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(11) Chemical restraint--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of medications that have a secondary effect of immobilizing or sedating a child, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons, is not chemical restraint and is not regulated as such under this chapter.

(12) Childhood activities--Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §749.2605 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities.

(13) ~~[(11)]~~ Child in care--A child who has been placed by a child-placing agency in a foster or adoptive home, regardless of whether the child is temporarily away from the home[; as in the case of a child at school or at work or receiving respite child-care services]. Unless a child has been discharged from the child-placing agency, the child is considered a child in care.

(14) Corporation or other type of business entity--May include an association, corporation, nonprofit association, nonprofit corporation, nonprofit association with religious affiliation, nonprofit corporation with religious affiliation, limited liability company, political subdivision, or state agency. For purposes of this chapter, this definition does not include any type of "partnership", which is defined separately.

(15) Corrective or adverse action--Is any action by you that places a restriction or condition on a foster home's verification, including the revocation of the verification. Note: For information regarding a corrective or adverse action which Licensing is taking against you, see Subchapter L of Chapter 745 (relating to Enforcement Actions);

~~[(12) Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.]~~

(16) ~~[(13)]~~ Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(17) ~~[(14)]~~ Days--Calendar days, unless otherwise stated.

(18) ~~[(15)]~~ De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(19) ~~[(16)]~~ Department--The Department of Family and Protective Services (DFPS).

(20) ~~[(17)]~~ Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

~~[(18) Disinfecting solution--A disinfecting solution may be:]~~

~~[(A) A self-made solution, prepared as follows:]~~

~~[(i) One tablespoon of regular strength liquid household bleach to each gallon of water used for disinfecting such items as toys, eating utensils, and nonporous surfaces (such as tile, metal, and hard plastics); or]~~

~~[(ii) One-fourth cup of regular strength liquid household bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, diaper-changing tables, and porous surfaces, such as wood, rubber or soft plastics; or]~~

~~[(B) A commercial product that is registered with the Environmental Protection Agency (EPA) as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children, like crib rails and toys.]~~

(21) ~~[(19)]~~ Emergency Behavior Intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(22) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. A medication is not regulated as an "emergency medication" under this chapter if:

(A) It is prescribed by a treating health-care professional and administered solely for a medical or dental reason (e.g. benadryl for an allergic reaction or medication to control seizures); and

(B) Its use for a medical or dental reason has a secondary effect of modifying a child's behavior.

(23) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury, so that intervention is immediately necessary to prevent:

(A) Imminent probable death or substantial physical injury to the child because the child attempts or continually threatens to commit suicide or substantial physical injury; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

~~[(20) Family applicants--All residents, part- or full-time, of a household that are being considered for verification as an agency foster home or approved as an adoptive home.]~~

(24) ~~[(21)]~~ Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

~~[(22) Food service--The preparation or serving of meals or snacks.]~~

(25) ~~[(23)]~~ Foster family home--A home that is the primary residence of the foster parent(s) and provides care for six or fewer children or young adults, under the regulation of a child-placing agency.

(26) [(24)] Foster group home--A home [An operation] verified:

(A) After January 1, 2007, that is the primary residence of the foster parent(s) and provides care for seven to 12 children or young adults, under the regulation of a child-placing agency; or

(B) Prior to January 1, 2007, that provides care for seven to 12 children or young adults, under the regulation of a child-placing agency.

(27) [(25)] Foster home--As referred to in this chapter means both types of homes, foster family homes and foster group homes.

(28) [(26)] Foster home screening--A written evaluation, prior to the verification of the [placement of a child in a] foster home, of the:

(A) Prospective foster parent(s);

(B) Family of the prospective foster parent(s); [and]

(C) All other part- or full-time household members; and

(D) [(C)] Environment of the foster parent(s) and their family in relation to their ability to meet the child's needs.

(29) [(27)] Foster parent--A person verified to provide child-care [who provides foster care] services in the foster home.

(30) [(28)] Full-time--At least 30 hours per week.

(31) Governing body--A group of persons or officers of the corporation or other type of business entity having ultimate authority and responsibility for the child-placing agency.

[(29)] Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(32) [(30)] Health-care professional--A licensed physician, licensed advanced practice registered nurse, physician's assistant, licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(33) [(31)] High-risk behavior--Behavior of a child that creates an immediate safety risk to the child or others. Examples of high-risk behavior include suicide attempt, self-abuse, physical aggression causing bodily injury, chronic running away, substance abuse [drug addiction], fire setting, and sexual aggression or perpetration.

(34) [(32)] Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(35) [(33)] Immediate danger to self or others--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury, or the probability of bodily harm resulting from a child running away [if less than 10 years old chronologically or developmentally]. Immediate danger does not include:

(A) Harm that might occur over time or at a later time;

or

(B) Verbal threats or verbal attacks.

(36) [(34)] Infant--A child from birth through 17 months.

[(35)] Livestock--An animal raised for human consumption or an equine animal.

[(36)] Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

[(37)] Long-term placement--A placement intended to last for more than 90 days.

(37) [(38)] Master record--The compilation of all required records for a specific person or home, such as a master personnel record, master case record for a child, or a master case record for a foster or adoptive home.

(38) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(39) Mental health professional--Refers to:

(A) A psychiatrist licensed by the Texas Medical Board;

(B) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(C) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(D) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(E) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(F) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

(40) Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(41) Non-mobile--A child that is not able to move from place to place, even with assistance.

[(42)] Normalcy--The ability of a child in care to live as normal a life as possible, including:]

[(A)] Having normal interaction and experiences within a foster family and participating in foster family activities; and]

[(B)] Engaging in age and developmentally appropriate childhood activities, such as extracurricular activities, social activities in and out of school, and employment opportunities.]

(42) [(43)] Overnight care--Temporary care provided for a child in foster care by someone other than the foster parents with whom the child is placed for more than 12 consecutive hours, but no more than 72 consecutive hours.

(43) Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns a child-placing agency.

(44) Parent--A person who has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(45) Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(46) Permit holder--The owner of the child-placing agency that is granted the permit.

(47) [(45)] Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(48) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.

(49) [(46)] Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(50) [(47)] Post-adoption [Post-adoptive] services--Services available through the child-placing agency (direct or on referral) to birth and adoptive parents and the adoptive child after the adoption is consummated. Examples include counseling, maintaining a registry if a central registry is not used, providing pertinent, new medical information to birth or adoptive parents, or providing the adult adoptee a copy of his record upon request.

(51) [(48)] Post-placement adoptive report--A written evaluation of the assessments and interviews, after the adoptive placement of the child, regarding the:

- (A) Child;
- (B) Prospective adoptive parent(s);
- (C) Family of the prospective adoptive parent(s);
- (D) Environment of the prospective adoptive parent(s) and their family; and
- (E) Adjustment of all individuals to the placement.

(52) [(49)] Pre-adoptive home screening--See adoptive home screening.

(53) [(50)] PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(54) [(51)] Professional service provider--Refers to:

- (A) A child placement management staff or person qualified to assist in child placing activity;
- (B) A psychiatrist licensed by the Texas Medical Board;
- (C) A psychologist licensed by the Texas State Board of Examiners of Psychologists;
- (D) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;
- (E) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;
- (F) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists;
- (G) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health; and

(H) Other professional employees in fields such as drug counseling, nursing, special education, vocational counseling, pastoral counseling, and education who may be included in the professional staffing plan for your agency that provides treatment services if the professional's responsibilities are appropriate to the scope of the agency's

program description. These professionals must have the minimum qualifications generally recognized in the professional's area of specialization.

(55) Prone restraint--A restraint in which the child is placed in a chest-down hold.

(56) [(52)] Psychosocial assessment--An evaluation by a mental health professional of a child's mental health that includes a:

(A) Clinical interview of the child;

(B) Diagnosis from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5), or statement that rules out a DSM-5 diagnosis;

(C) Treatment plan for the child, including whether further evaluation of the child is needed (for example: is a psychiatric evaluation needed to determine if the child would benefit from psychotropic medication or hospitalization; or is a psychological evaluation with psychometric testing needed to determine if the child has a learning disability [disabilities] or an intellectual disability [disabilities]); and

(D) Written summary of the assessment.

(57) [(53)] Re-evaluate--Assessing [Re-evaluation--Includes an assessment of] all factors required for the initial evaluation [only] for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(58) [(54)] Regularly--On a recurring, scheduled basis. Note: For the definition for "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(59) [(55)] Sanitize--A four-step process that must be followed in the subsequent order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or article to air-dry.

(60) [(56)] School-age child--A child who is five years old or older and who will attend school in August or September of that year.

(61) [(57)] Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(62) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other residents and the placement of the child alone in an area from which the resident is prevented from leaving by a physical barrier, force, or threat of force.

(63) [(58)] Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(64) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(65) [(59)] State or local fire authority [inspector]--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors.

~~[(60) State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of the city, county, or state government.]~~

~~(66) [(64)] Substantial physical injury [bodily harm]--Physical injury serious enough that a reasonable [prudent] person would conclude that the injury needs treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damages to internal organs. Evidence that physical injury is substantial includes the location and/or severity of the bodily harm and/or the age of the child. Substantial physical injury [required professional medical attention. It] does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.~~

~~(67) Supine restraint--Placing a child in a chest up restraint hold.~~

~~(68) Supplement--Includes vitamins, herbs, and any supplement labeled dietary supplement.~~

~~(69) Swimming activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.~~

~~(70) [(62)] Toddler--A child from 18 months through 35 months old.~~

~~(71) [(63)] Trafficking victim--A child who has been recruited, harbored, transported, provided or obtained for the purpose of forced labor or commercial sexual activity, including any child subjected to an act or practice as specified in Penal Code §20A.02 or §20A.03.~~

~~(72) [(64)] Trauma informed care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:~~

- ~~(A) The impact that traumatic experiences have on the lives of children;~~
- ~~(B) The symptoms of childhood trauma;~~
- ~~(C) An understanding of a child's personal trauma history;~~
- ~~(D) The recognition of a child's trauma triggers; and~~
- ~~(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.~~

~~(73) [(65)] Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.~~

~~[(66) Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.]~~

~~(74) [(67)] Unsupervised childhood activities [activity]--Childhood activities that [When] a child in care participates in [an activity] away from the foster home and the foster parents. Childhood activities that the foster parents conduct or supervise or the child-placing agency sponsors are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days. [earegivers.]~~

~~(75) [(68)] Volunteer--A person who provides:~~

~~(A) Child-care services, treatment services, or programmatic services under the auspices of the agency without monetary compensation, including a "sponsoring family;" or~~

~~(B) Any type of services under the auspices of the agency without monetary compensation when the person has unsupervised access to a child in care.~~

~~[(69) Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.]~~

~~(76) [(70)] Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.~~

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

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Trevor Woodruff

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: July 10, 2016

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



## DIVISION 2. SERVICES

### 40 TAC §749.61

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.61. *What types of services does Licensing regulate?*

We regulate the following types of services:

(1) (No change.)

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children:

(A) With Emotional Disorders who have a current DSM-5 diagnosis, such as mood disorders, psychotic disorders, or dissociative disorders, and [who] demonstrate two [three] or more of the following:

~~[(i) A Global Assessment Functioning of 50 or below;]~~

~~[(ii) A current DSM diagnosis;]~~

~~[(iii) Major self-injurious actions, including a [recent] suicide attempt within the last 12 months [attempts];]~~

(ii) [(iv)] Difficulties that present a significant risk of harm to others, including frequent or unpredictable physical aggression; or

(iii) [(v)] An additional DSM-5 [A primary] diagnosis of substance-related and/or addictive disorder with [substance abuse or dependency and] severe impairment [because of the substance abuse];

(B) With a DSM-5 diagnosis of Intellectual Disability [Disabilities; who have an intellectual functioning of 70 or below and are] characterized by prominent, severe [significant] deficits and pervasive impairment in one or more of the following areas:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care [self care];

(ii) - (v) (No change.)

(C) With a DSM-5 diagnosis of Autism Spectrum Disorder that is [Pervasive Developmental Disorder, which is a category of disorders (e.g. Autistic Disorder or Rett's Disorder)] characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care [self care];

(ii) - (v) (No change.)

(D) - (E) (No change.)

(3) (No change.)

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

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Trevor Woodruff

General Counsel

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



## SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

### DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

#### 40 TAC §§749.101, 749.103, 749.105, 749.107

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.101. *What are my responsibilities as the permit holder before I begin operating?*

§749.103. *What are my operational responsibilities as the permit holder?*

§749.105. *What responsibilities do I have for personnel policies and procedures?*

§749.107. *What must my conflict of interest policies include?*

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

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Trevor Woodruff

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



## DIVISION 1. PLANS AND POLICIES REQUIRED FOR THE APPLICATION PROCESS

#### 40 TAC §§749.101, 749.103, 749.105, 749.107, 749.109, 749.111, 749.113, 749.115, 749.117, 749.119, 749.121, 749.123, 749.125, 749.127, 749.129, 749.131, 749.133, 749.135, 749.137, 749.139, 749.141

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §40.042.

§749.101. *What plans must I submit for Licensing's approval as part of the application process?*

As part of the application process, you must submit the following plans to us for approval:

(1) An operation plan that must include:

(A) The location and telephone numbers of all of your offices, including branch offices;

(B) Your hours of operation at your main office and any branch offices; and

(C) A list of persons or officers and their titles who comprise the governing body, if applicable;

(2) A fiscal plan that includes:

(A) A detailed estimate of the operating costs of the agency for the first three months;

(B) Documentation of reserve funds or available credit at least equal to operating costs for the first three months;

(C) An estimated 12-month budget of income and expenses; and

(D) Predictable funds sufficient for the first year of operation;

(3) A plan to evaluate the effectiveness of your system for meeting the rules of this chapter, including evaluating the accuracy of foster home screenings and the comprehensiveness of the supervisory visits. This plan must describe how your evaluation process will:

(A) Identify problems, including deficiencies;

(B) Correct the problems identified; and

(C) Document the problems identified and when and how the problems were corrected; and

(4) A plan to ensure that you will:

(A) Investigate reports of minimum standards violations, upon our request; and

(B) Submit reports of your agency's investigative actions and finding to us within 30 days for our review, follow-up, and closure.

§749.103. What policies and procedures must I submit for Licensing's approval as part of the application process?

(a) You must develop the policies and procedures identified in subsection (b) of this section. Your policies and procedures must comply with or exceed the minimum standards specified in this chapter, Chapter 42 of the Human Resources Code, and Chapter 745 of this title (relating to Licensing), and other applicable laws.

(b) As part of the application process, you must submit the following policies and procedures to us for our approval:

(1) Policies and procedures related to record keeping, including where the records will be located. The policies must be consistent with Subchapter D of this chapter (relating to Reports and Records Keeping);

(2) Personnel policies and procedures consistent with §749.105 of this title (relating to What are the requirements for my personnel policies and procedures?);

(3) Conflict of interest policies consistent with §749.107 of this title (relating to What must my conflict of interest policies include?);

(4) Admission policies consistent with §749.109 of this title (relating to What must my admission policies include?);

(5) Placement policies consistent with §749.111 of this title (relating to What must my placement policies include?);

(6) Child-care policies consistent with §749.113 of this title (relating to What child-care policies must I develop?);

(7) Emergency behavior intervention policies consistent with §749.115 of this title (relating to What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?);

(8) Discipline policies consistent with §749.117 of this title (relating to What are the requirements for my discipline policies for children in care?);

(9) Foster care policies consistent with §749.119 of this title (relating to What foster care policies must I develop?);

(10) Rights and responsibilities of the child-placing agency and the foster parents consistent with §749.121 of this title (relating to

What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?);

(11) Additional policies for foster parents that provide treatment services consistent with §749.123 of this title (relating to What policies must I develop regarding foster parents who provide treatment services to a child with primary medical needs?);

(12) Additional policies for foster parents who offer a transitional living program consistent with §749.125 of this title (relating to What policies must I develop for foster parents who offer a transitional living program?);

(13) Policies for babysitters, overnight care providers, and respite care providers consistent with §749.127 of this title (relating to What policies must I develop for babysitters, overnight care providers, and respite care providers?);

(14) Policies for a legal risk placement program consistent with §749.129 of this title (relating to What policies must I develop for a legal risk placement program for foster-adoptive families?);

(15) Adoption policies, if applicable, consistent with §749.131 of this title (relating to What policies must I develop if I offer adoption services?);

(16) Volunteer policies consistent with §749.133 of this title (relating to What policies must I develop if I use volunteers?);

(17) Abuse and neglect policies consistent with §749.135 of this title (relating to What abuse and neglect policies must I develop?);

(18) An appeal process for adult clients consistent with Division 8 of Subchapter C (relating to Clients and Appeals);

(19) A weapons, firearms, explosive materials, and projectiles policy, for foster care services, consistent with Division 3 of Subchapter O (relating to Weapons, Firearms, Explosive Materials, and Projectiles); and

(20) A tobacco and e-cigarette policy consistent with §749.2931 of this title (relating to What policies must I enforce regarding tobacco products and e-cigarettes?).

§749.105. What are the requirements for my personnel policies and procedures?

Your personnel policies and procedure must:

(1) Include an organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Include written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Include a written professional staffing plan that:

(A) Demonstrates that the number, qualifications, and responsibilities of professional positions, including the child-placing agency administrator, are appropriate for the size and scope of your services and that workloads are reasonable enough to meet the needs of the children in care;

(B) Describes in detail the qualifications, duties, responsibilities, and authority of professional positions. For each position, the plan must show whether employment is on a full-time, part-time, or continuing consultative basis. For part-time and consulting positions, the plan must specify the number of hours and/or frequency of services; and

(C) Describes how staff or service providers support clients served through branch offices;

(4) Include written training requirements for employees and caregivers;

(5) Comply with background check requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(6) Require your employees to report serious incidents and suspected abuse, neglect, or exploitation. An employee who suspects abuse, neglect, or exploitation must report their suspicion directly to us and may not delegate this responsibility, as directed by Texas Family Code §261.101(b);

(7) Require that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child be informed in writing of their responsibility to maintain child confidentiality; and

(8) Either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?).

§749.107. What must my conflict of interest policies include?

Your conflict of interest policies must include:

(1) A statement that child placement staff and child placement management staff will not conduct, review, or approve foster home screenings, adoptive home screenings, or post-placement adoptive reports if there is a conflict of interest or bias with the family or the child. For example, there would be a conflict of interest if the staff is related to or has a personal relationship with the family or the child;

(2) A statement that it is a conflict of interest for your agency to verify as a foster parent or approve as an adoptive parent any of the following persons or relatives of any of the following persons: any current owner, member of the governing body, executive director, or any other employee or contract service provider of your agency;

(3) A code of conduct on the relationship between your agency's owners (including members of the governing body, if applicable), employees, contract service providers, children in placement, children's families, and prospective and current foster and adoptive parents, including required parameters for entering into independent financial relationships or transactions;

(4) For corporations or other types of business entities, a statement that the majority of the voting members of the governing body must consist of persons who do not have a conflict of interest that would potentially interfere with objective decision making. Persons who have such a conflict of interest include the following:

(A) Family members related by the third degree of consanguinity or second degree of affinity to:

(i) An officer of the governing body;

(ii) The administrator or executive director of the child-placing agency; or

(iii) Any person with a controlling interest in the entity's stock; or

(B) If the governing body is a non-profit entity, persons who benefit financially from the agency, including but not limited to persons employed by or working at the agency, paid consultants, sub-contractors, or vendors; and

(5) For adoptions, you may state whether the person whom you evaluated appears to be suitable for adoption, even if there are other individuals requesting adoption. If you have not evaluated parties of

a disputed case, you must refrain from making an adoption or custody recommendation, unless otherwise directed by the court.

§749.109. What must my admission policies include?

Your admission policies must include a description of each program you offer, including:

(1) The program's goals and services provided, including whether the program accepts emergency admissions; and

(2) The characteristics of the population the program serves, such as gender, age range, behaviors, and diagnoses. If the program includes treatment services, your policy must describe the type of treatment services the program is designed to treat, including emotional disorders, intellectual disability, autism spectrum disorder, primary medical needs, or trafficking victim services.

§749.111. What must my placement policies include?

Your placement policy must include a description of how you will:

(1) Ensure that your agency will not place a child before determining that foster care and/or adoption is appropriate for the child;

(2) Match a child with a foster and/or adoptive home to ensure that the child's needs are met;

(3) Make every effort to place siblings together and document in each child's record when it is necessary to separate siblings; and

(4) Ensure contact between siblings is maintained when siblings are not placed together or document why contact is not appropriate for one or more of the siblings.

§749.113. What child-care policies must I develop?

You must develop policies that describe:

(1) Visitation rights between the child and family members and the child and friends;

(2) The child's right to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic messages and mail;

(3) The child's right to correspond by telephone with family members and friends;

(4) The child's right to receive and give gifts to family, friends, staff or caregivers, or other children in care, including any restrictions on gifts;

(5) How a child obtains clothing;

(6) Personal possessions a child is or is not allowed to have, where the possessions may be stored, and search policies;

(7) Emergency behavior intervention techniques if the use of emergency behavior intervention is permitted in your agency. The policy must be consistent with §749.115(5) of this title (relating to What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?);

(8) Any religious program or activity that you offer, including whether children must participate in the program or activity, and if so, with or without caregivers;

(9) The plans for meeting the educational needs of each child;

(10) When trips with caregivers away from the home are allowed and what protocols will be used;

(11) Program expectations and rules that apply to all children, including an overview of your discipline policy;

(12) Child grievance procedures;

(13) The types and frequency of reports to parents;

(14) Procedures for routine and emergency diagnosis and treatment of medical and dental problems;

(15) Routine health care relating to pregnancy and child-birth, if you admit and/or care for a pregnant child;

(16) Your plan for providing health-care services to a child with primary medical needs;

(17) Transitional living policies, if applicable;

(18) How you will determine whether it is appropriate for a child to use weapons, firearms, explosive materials, and projectiles, if applicable. This information must be consistent with §749.103(b)(19) of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?).

§749.115. What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?

At a minimum, you must develop emergency behavior intervention policies to implement the requirements in Subchapter L of this chapter (relating to Foster Care Services: Emergency Behavior Intervention). The policies must include the following:

(1) A complete description of emergency behavior interventions that you permit caregivers to use;

(2) The specific techniques that caregivers can use;

(3) The qualifications for caregivers who assume the responsibility for emergency behavior intervention implementation, including required experience and training, and an evaluation component for determining when a specific caregiver meets the requirements of a caregiver qualified in emergency behavior intervention. You must have an on-going program to evaluate caregivers qualified in emergency behavior intervention and the use of emergency behavior interventions;

(4) Your requirements for and restrictions on the use of permitted emergency behavior interventions;

(5) For the orientation required in §749.111(b)(6) of this title (relating to What orientation must I provide a child?), how you will:

(A) Explain and document to a child in a manner that the child can understand:

(i) Who can use an emergency behavior intervention;

(ii) The actions a caregiver must first attempt to defuse the situation and avoid the use of emergency behavior intervention;

(iii) The situations in which emergency behavior intervention may be used;

(iv) The types of emergency behavior intervention you permit;

(v) When the use of an emergency behavior intervention must cease;

(vi) What action the child must exhibit to be released from the emergency behavior intervention;

(vii) The way to report an inappropriate emergency behavior intervention;

(viii) The way to provide voluntary comments during or after an emergency behavior intervention; and

(ix) The process for making written comments after an emergency behavior intervention, such as comments regarding the incident that led to the emergency behavior intervention, the manner in which a caregiver intervened, and the manner in which the child was the subject or to which they were a witness. You may create a standardized form that is easily accessible or give children the permission to submit comments on regular paper; and

(B) Obtain each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process;

(6) Requirements that caregivers must attempt less restrictive and less intrusive emergency behavior interventions as preventive measures and de-escalating interventions to avoid the use of emergency behavior intervention;

(7) Training for emergency behavior intervention. The policy must include a description of the emergency behavior intervention training curriculum that meets the requirements in the rules of this chapter, the amount and type of training required for different levels of caregivers (if applicable), training content, and how the training will be delivered; and

(8) Prohibitions for discharging or otherwise retaliating against:

(A) An employee, child, foster parent or other adult client, resident, or other person for filing a complaint, presenting a grievance, or otherwise providing in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home; or

(B) A child, foster parent or other adult client, or resident because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home.

§749.117. What are the requirements for my discipline policies for children in care?

(a) You must develop discipline policies for children in foster care or in an adoptive placement prior to consummation that must:

(1) Guide caregivers and employees in the methods used for the discipline of children;

(2) Integrate trauma informed care into the care, treatment, and management of each child;

(3) Include measures for positive responses to appropriate behavior;

(4) Include the importance of nurturing behavior, stimulation, and promptly meeting the child's needs; and

(5) Include a statement that discipline of any type is not allowable for infants.

(b) For children in foster care, the discipline policies you develop must also be consistent with Subchapter K, Division 6 of this title (relating to Discipline and Punishment).

§749.119. What foster care policies must I develop?

You must develop foster care policies that include the following:

(1) Criteria and procedures for screening and accepting foster parent applicants or agency home caregivers who can meet the needs of the children your agency serves;

(2) Criteria for making decisions about the number, ages, gender, and needs of children who may be placed in a foster home;

(3) Pre-service and annual training requirements for foster parents or agency home caregivers that at a minimum meet the requirements of Subchapter F of the Chapter (relating to Training and Professional Development); and

(4) Policies on how you will provide services if the home provides more than one type of care.

§749.121. What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?

You must develop policies clearly stating the rights and responsibilities of the child-placing agency and foster parents. The policies must specify:

(1) What decisions you will make, what decisions the foster parents will make, and which ones you and the foster parents must agree upon. This policy must support normalcy consistent with Subchapter M, Division 7 of this chapter (relating to Normalcy);

(2) For training requirements for foster parents:

(A) What part you will provide;

(B) What part the foster parents must acquire on their own; and

(C) A statement about who will be responsible for training fees, travel expenses, and associated child-care costs;

(3) How you and the foster parents will communicate with each other;

(4) The amount of reimbursement you will provide the foster parents and when the foster parents will receive it;

(5) The type of relevant information and pre-placement contact you will provide, so the foster parents can make an informed decision about a placement;

(6) How much discretion the foster parents have in accepting or declining specific placements;

(7) The type and amount of support and services that are available to foster parents, including what support and services you will provide for babysitting, overnight care, and respite child-care services;

(8) The type of information that the foster parents must report to you and within what time frames;

(9) The foster parents' role in the services to children in care, including expectations for the foster parents' participation in service planning and implementation of the service plan;

(10) The foster parents' right to appeal your actions and decisions that affect them and the procedures for making an appeal;

(11) The responsibilities of the child-placing agency and the foster parents for complying with the rules of this chapter; and

(12) How foster parents may review their child-placing agency home record.

§749.123. What policies must I develop regarding foster parents who provide treatment services to a child with primary medical needs?

Your support and services policies for foster parents that are required in §749.121(7) of this title (relating to What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?) must include the provision of overnight care and respite care for foster parents who provide treatment services to a child with primary medical needs. The policies must include:

(1) Making arrangements to provide at least 72 hours of overnight care to the foster parents each year; and

(2) Providing respite child care services as necessary.

§749.125. What policies must I develop for foster parents who offer a transitional living program?

For foster parents who offer a transitional living program, you must develop policies that address the following:

(1) Criteria used to select participants for the program;

(2) Supervision of participants consistent with §749.2597 of this title (relating to Where must the caregivers reside in order to supervise children who are in a transitional living program?);

(3) Expected behaviors of participants and consequences for failure to comply;

(4) Training, education, and experiences to be achieved in the program; and

(5) Roles of participants, agency employees, contract staff, and caregivers.

§749.127. What policies must I develop for babysitters, overnight care providers, and respite care providers?

For both in-home and out-of-home care, you must develop policies specifically for babysitters, overnight care providers, and respite care providers that include:

(1) Minimum age for each type of provider;

(2) Minimum amount and type of prior child-care experience that each type of provider must have;

(3) Amount and type of training each type of provider must have;

(4) Reference and background information that foster parents or you must obtain before using each type of provider;

(5) Number of children that each type of provider can care for;

(6) Information that the foster parents must share with a provider, including information about the children in care and emergency contact information for the foster parent and the agency;

(7) Specific care instructions that the foster parents must share with a provider for children with treatment needs;

(8) A method for contact between the foster parent (and/or the child-placing agency) and provider during the time of the provider's care;

(9) Procedures for agency review and approval of arrangements; and

(10) Requirements for documentation of arrangements, including agency child placement staff review and approval, in the foster home record.

§749.129. What policies must I develop for a legal risk placement program for foster-adoptive families?

If you operate a legal risk placement program, you must develop policies that specify:

(1) The requirements for foster-adoptive families to participate in this program; and

(2) Criteria used in selecting children for appropriate legal-risk placements.

§749.131. What policies must I develop if I offer adoption services?

You must develop policies for adoption services that include:

(1) Procedures and criteria for qualifying, screening, and selecting adoptive parents, including the:

(A) Criteria you will use to evaluate potential adoptive parents;

(B) Criteria you will use to make decisions about placing specific children with an adoptive family; and

(C) Procedures you will use to implement the selection criteria;

(2) Training and programs for the adoptive parents;

(3) Statement of the rights and responsibilities of the agency and adoptive parents prior to the consummation of the adoption;

(4) How you will assist the adoptive homes on how to best preserve the cultural identity of the children in their care;

(5) Fees charged to adoptive parents and reimbursements to birth mothers consistent with Division 5 of this subchapter (relating to Financial Assistance to Birth Mothers);

(6) Services that will be offered to birth parents;

(7) Degree to which birth parents may be involved in planning for and placing their child; and

(8) Post adoption services that will be offered to adoptive parents, adopted children, and birth parents.

§749.133. What policies must I develop if I use volunteers?

If you use volunteers, you must develop policies that:

(1) Include job descriptions and/or responsibilities for the volunteers;

(2) Address qualifications, screening, and selection procedures for the volunteers;

(3) Address orientation and training programs for the volunteers;

(4) Address supervision of volunteers; and

(5) Address volunteer contact with children in care.

§749.135. What abuse and neglect policies must I develop?

You must develop policies on preventing, recognizing, and responding to abuse and neglect of children, including:

(1) Required annual training for employees;

(2) Methods for increasing employee awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect;

(3) Methods for increasing employee awareness of prevention techniques for child abuse and neglect;

(4) Strategies for coordination between the agency and appropriate community organizations; and

(5) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention.

§749.137. What are the general requirements for my agency's policies and procedures?

(a) The requirements for policies only apply to the agency's policies that are required or governed by this chapter.

(b) All employees and caregivers must be aware of and follow your policies and procedures.

§749.139. What requirements must I follow when adopting my child-placing agency's plans, policies, and procedures?

(a) Your agency's plans, policies, and procedures must indicate the date on which you adopted them and their effective date.

(b) You must formalize the adoption of your agency's plans, policies, and procedures as appropriate for your type of ownership:

(1) If you are a sole proprietor, you must sign them;

(2) If you are a partnership, each partner must sign them;

or

(3) If you are a corporation or other type of business entity, the governing body must take a written action to adopt (sometimes this may be an order or the adoption may be included in the minutes of the governing body).

§749.141. Can Licensing cite my agency for a deficiency if I fail to operate according to my approved plans, policies, and procedures?

Yes, if you violate plans, policies, or procedures, then we may cite the relevant standard in Division 1 of this Subchapter (relating to Plans and Policies Required During the Application Process) as a deficiency.

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

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Trevor Woodruff

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## DIVISION 2. GOVERNING BODY

### 40 TAC §749.131, §749.133

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.131. What are the specific responsibilities of the governing body?

§749.133. After a permit has been issued, what subsequent information regarding my governing body must I provide to Licensing, and when must I provide it?

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

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## DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

### 40 TAC §749.151, §749.153

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §40.042.

#### §749.151. What are my operational responsibilities?

While you are operating, you must:

(1) Have a designated full-time child-placing agency administrator who meets the minimum qualifications of §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?);

(2) Operate according to your approved plans, policies, and procedures;

(3) Maintain current, true, accurate, and complete records;

(4) Allow us to inspect your child-placing agency during its hours of operation;

(5) Allow us to inspect or monitor any of your foster homes at any time;

(6) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's responsibilities, or space in the homes. If you offer more than one type of service, you must determine and document that no conflict exists;

(7) Maintain liability insurance as required by the Human Resources Code, §42.049; and

(8) Prepare the annual budget and control expenditures and ensure compliance with Division 3 of this Subchapter (relating to General Fiscal Requirements).

#### §749.153. What changes must I notify Licensing about regarding my child-placing agency?

(a) You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your agency or your governing body, if applicable;

(B) Move your agency to another location;

(C) Open a branch office; or

(D) Change your agency's or a branch office's hour of operation;

(2) As soon as possible, but at least 15 days before you:

(A) Make changes to the plans required in §749.101(3) and (4) of this title (relating to What plans must I submit for Licensing's approval as part of the application process?); or

(B) Make changes to the policies and procedures required in 749.103(b) of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(3) As soon as possible, but no later than two days after:

(A) You change your child-placing agency administrator.

(B) A new individual becomes a controlling person at your child-placing agency;

(C) An individual ceases to be a controlling person at your child-placing agency; or

(D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and

(4) About a foster home's verification status as described in §749.2489 of this title (relating to What information must I submit to Licensing about a foster home's verification status?).

(b) You must report to the Texas Abuse and Neglect Hotline as soon as you become aware of any foster or adoptive placements that appear to have been made by someone other than the child's parents or a child-placing agency.

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## DIVISION 3. GENERAL FISCAL REQUIREMENTS

### 40 TAC §749.161, §749.163

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

#### §749.161. What are my general fiscal requirements?

§749.163. *What are my specific fiscal requirements?*

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

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#### 40 TAC §749.161

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §40.042.

§749.161. *What are my fiscal requirements?*

(a) You must establish and maintain your agency on a sound fiscal basis, including

- (1) Paying your employees timely;
  - (2) Paying foster parents per your agreement with them;
- and
- (3) Making sure the needs of children in care are being met.

(b) You must maintain complete financial records that comply with Generally Accepted Accounting Principles, including:

(1) Accounting for a child's money separately from the funds of your agency and the foster home. You may not use a child's personal earnings, allowances, or gifts to pay for the child's room and board, unless such a use is a part of the child's service plan and the child's parent approves it in writing. You must give or send the child's money to the child, parent, or next placement within 30 days of the child's discharge; and

(2) Making one of the following available for our review:

(A) An annual review of your financial records conducted by an independent Certified Public Accountant in accordance with the Generally Accepted Accounting Principles; or

(B) Proof of reserve funds equal to at least three months of operating expenses for your agency.

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

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#### DIVISION 7. BRANCH OFFICES

##### 40 TAC §§749.304, 749.305, 749.307

The new section and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC §40.042.

§749.304. *Where must I have a main or branch office?*

You must have either a main or branch office:

- (1) In each region of the department where you verify homes; or
- (2) Within 150 miles of each verified foster home.

§749.305. *What are the requirements for administrators and treatment directors for a main office and branch offices [When are additional staff or offices required for foster care services]?*

(a) You [In each DFPS region where you verify foster homes or within 150 miles of each verified foster home, you] must comply with one of the following:

(1) The [Maintain a] main office and each [or] branch office, must have a separate [with]:

(A) Administrator [An administrator] who meets §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?); and

(B) Treatment [A treatment] director, if applicable, per §749.721 of this title (relating to Must I have a treatment director?); or

(2) Offices that operate based on the following caseload limits for child placement staff may share the same administrator and treatment director [Maintain a main office or branch office that operates based on the following caseload limits]:

(A) A caseload of foster children only that does not [cannot] exceed:

(i) - (iii) (No change.)

(B) A caseload of foster homes only that does not [cannot] exceed 15 homes; and

(C) A combination caseload of both children and homes that does not [cannot] exceed 30 cases. Calculate the maximum of 30 cases by counting:

(i) - (iii) (No change.)

[(b) If you choose to comply with subsection (a) of this section using the caseload limits in subsection (a)(2) of this section, you are

only required to have one administrator and one treatment director (if applicable) for each license.]

[(e) If you were licensed before January 1, 2007, you have until January 1, 2012, to comply with this requirement.]

(b) [(d)] This rule does not apply to a child-placing agency that provides only adoption services, including foster homes verified by a private adoption agency solely for the care of infants awaiting placement in an adoptive home pending the resolution of the child's eligibility for adoption and/or the readiness of an appropriate adoptive home. This exception does not apply to [include] a foster home that is also the intended adoptive home.

§749.307. *What happens to the foster homes supervised by a branch office when the branch office closes?*

(a) If the branch office closure is related to a corrective or adverse action which Licensing is taking or has taken against your agency, you must:

(1) (No change.)

(2) Transfer a foster home under that branch office to your main or another branch office, including:

(A) - (B) (No change.)

(C) Amending the [issuing a new] verification certificate.

(b) If the branch office closure is not related to a corrective or adverse action which Licensing is taking or has taken against your agency, you may transfer the foster homes to the main office or another branch office without updating the foster [homes'] home screening [studies].

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

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## DIVISION 8. POLICIES AND PROCEDURES

**40 TAC §§749.331, 749.333, 749.335, 749.337, 749.339, 749.341, 749.343, 749.345, 749.347, 749.349, 749.351, 749.353, 749.355, 749.357, 749.359**

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.331. *What are the general requirements for my agency's policies?*

§749.333. *What are the requirements for my admission policies?*

§749.335. *What information must my placement policy contain?*

§749.337. *What policies must I provide to the person placing the child?*

§749.339. *What child-care policies must I develop?*

§749.341. *What emergency behavior intervention policies must I develop if the use of emergency behavior intervention is permitted in my foster homes?*

§749.343. *What policies must I develop on the discipline of children in foster care and pre-adoptive care?*

§749.345. *What foster care policies must I develop?*

§749.347. *What policies must I develop on the rights and responsibilities of the child-placing agency, foster parents, and caregivers?*

§749.349. *What additional policies must I develop for foster parents that provide treatment services?*

§749.351. *What policies must I develop for fosters parents who offer a transitional living program?*

§749.353. *What policies must I develop for babysitters, overnight care providers, and respite care providers?*

§749.355. *What policies must I develop for a legal risk placement program for foster-adoptive families?*

§749.357. *What policies must I develop if I offer adoption services?*

§749.359. *What policies must I develop if I use volunteers?*

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## 40 TAC §§749.421, 749.423, 749.425

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.421. *Who are my clients?*

(a) Anyone can request information from you or attend a meeting open to all interested persons. A person becomes your client when you establish a relationship beyond that available to someone who is merely an interested person.

(b) [(a)] Your child clients include children in:

(1) Foster care; and

(2) Pre-consummated adoptive placement.

(c) [(b)] Your adult clients include:

(1) Birth parents [parent], managing conservators [conservator], or whoever has legal responsibility for children they [the child that you] are placing in your care;

(2) Foster parent applicants;

(3) Foster parents;

(4) Adoptive applicants;

(5) Adoptive parents prior to consummation of the adoption; [and]

(6) Adoptive parents and birth parents seeking post adoption [adoptive] services; and[-]

(7) Young adults in your care.

~~[(e) Anyone can call you for information or attend a meeting open to all interested persons, but a person becomes your client when you establish a relationship beyond that available to someone who is merely an interested person.]~~

*§749.423. What rights do my adult clients have?*

When a person becomes your adult client, you must inform the person in writing:

(1) That the rules of this chapter, any [the] compliance [status] reports, and your policies are available for review upon their request;

(2) (No change.)

(3) Of procedures for making a complaint to us regarding a violation of minimum standards; and

(4) Of other entities and their phone numbers and addresses where it is appropriate to file complaints, such as the board or state agency that professionally licenses individuals whom you employ or contract with, and the procedures for making complaints to those entities.

*§749.425. What must my appeal process include?*

(a) (No change.)

(b) The process must describe:

(1) (No change.)

(2) The procedures and time frames for clients to make [making] an appeal;

(3) The criteria or basis that will be used to make the decision;

(4) ~~[(3)]~~ Who will hear an appeal and make the decision;

(5) Time frames for making a decision and communicating the decision to the client; and

(6) ~~[(4)]~~ How the client will be informed of ~~[person who requests an appeal will find out about]~~ the decision.~~[-]~~

~~[(5) Time frames for making a decision and communicating the decision to the complainant; and]~~

~~[(6) The basis for an appeal decision.]~~

(c) - (d) (No change.)

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## SUBCHAPTER D. REPORTS AND RECORD KEEPING

### DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

#### 40 TAC §§749.501, 749.503, 749.509, 749.513, 749.515

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

*§749.501. What is a serious incident?*

A serious incident is a non-routine occurrence that has or may have dangerous or significant consequences on the care, supervision, and/or treatment of a child. The different types of serious incidents are noted in §749.503 of this title (relating to When must I report and document a serious incident?).

*§749.503. When must I report and document a serious incident?*

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

Figure: 40 TAC §749.503(a)

(b) If there is a medically pertinent incident, such as a seizure, that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as a serious incident. [Foster parents must report any serious incident directly to the Child Abuse Hotline if the incident involves a child under the care of the foster parent.]

(c) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law [law] enforcement as outlined in the chart above;[-]

(2) The ~~[You also have to report the incident to the]~~ parents, if the adult resident is not capable of making decisions about the resident's [his] own care; and[-]

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(d) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an

employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified time frame:

Figure: 40 TAC §749.503(d)

§749.509. *How do I make a report of a serious incident or occurrence to Licensing?*

(a) All serious incident reports must be made directly to the Texas ~~[Child]~~ Abuse and Neglect Hotline.

(b) Foster parents must report any serious incidents directly to the Texas Abuse and Neglect Hotline if the incident involves a child under the care of the foster parent. ~~[Occurrences that are required to be reported to Licensing in writing must be forwarded to your Licensing representative (See §749.507 (2) and (3) of this title (relating to When must I report other occurrences?)).]~~

§749.513. *What additional documentation must I include with a written serious incident report?*

You must include the following additional documentation with a written serious incident report, as applicable:

Figure: 40 TAC §749.513

§749.515. *How long ~~[Where]~~ must I keep my incident reports?*

~~[(a)]~~ You must keep a copy of the incident reports ~~[report]~~ on file for two years. The reports must be easily accessible to Licensing upon request.

~~[(b)]~~ You must permit Licensing to make a copy of incident reports, as requested.]

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#### 40 TAC §749.507

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

§749.507. *When must I report other occurrences?*

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## DIVISION 2. OPERATION RECORDS

### 40 TAC §§749.529, 749.531, 749.533 - 749.535, 749.539

The new sections and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendments implement HRC §40.042.

§749.529. *What are the retention requirements for my agency's policies?*

(a) You must maintain a copy of your policies and procedures at the agency. They must be available for review by employees, contract staff, caregivers, Licensing, or your clients, upon request.

(b) You must maintain copies of all current and previous policies for at least two years.

§749.531. *What policies and procedures must I have for protecting records?*

You must have policies and procedures for:

(1) Protecting paper and electronic records from destruction and loss; and

(2) Clarifying the persons:

(A) Within your agency who are authorized to access records; and

(B) Outside of your agency who are authorized by law to have access to records.

§749.533. *What additional policies and procedures must I have for electronic records?*

If you keep electronic records, you must develop policies and procedures in addition to the requirements in §749.531 of this title (relating to What policies and procedures must I have for protecting records?). These policies and procedures must address:

(1) What records must be in the external paper file and what records can be stored in the electronic file;

(2) Computer security systems, including confidentiality, passwords, and employee procedures to ensure the security of the system;

(3) Requirements for routine back-up of data;

(4) Anti-virus protection systems; and

(5) Limit access to your electronic files to persons within your agency authorized to see specific information in an electronic file.

§749.534. *Are electronic signatures allowed?*

Yes, you may use electronic and digital signatures, including approvals by e-mail and electronic approvals.

§749.535. *How current must a record be?*

(a) All documentation must be in the record:

(1) (No change.)

~~{(2) Within 15 days from the end of the month for monthly summaries; or}~~

~~(2) [(3)] As otherwise specified in this chapter.~~

(b) Foster parents must submit copies ~~[Copies]~~ of any records they keep. ~~They must submit them within 15 days from the end of the month. [kept by the foster parents must be submitted to you each month.]~~ You must file these records in the child's record.

§749.539. *Where must I maintain foster home disaster and emergency plans?*

You must maintain a copy of each current foster home disaster and emergency plan at the main office, the relevant branch office, [agency] or in a central administratively designated location.

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**40 TAC §749.531, §749.533**

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.531. *If I keep electronic records, what procedures must I have for those records?*

§749.533. *What procedures must I have for protecting records?*

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**DIVISION 3. PERSONNEL RECORDS**

**40 TAC §749.551, §749.553**

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.551. *Where must I maintain personnel records?*

(a) You must maintain all active personnel records at the main office or keep individual personnel records at the office where each person is working. ~~[agency. This may include electronic records in §749.531 of this title (relating to If I keep electronic records, what procedures must I have for those records?).]~~

(b) You must maintain archived personnel records at the main office, the relevant branch office, [agency] and/or in a central administratively designated location.

(c) - (d) (No change.)

(e) You must maintain in the main office of the agency a master list of active and archived personnel records with a notation of the [and their] location of those records [in the main office of the agency].

§749.553. *What information must the personnel record of an employee include?*

For each employee, excluding foster parents, the personnel record must include:

(1) - (3) (No change.)

(4) Evidence of any valid professional licensures, certifications, or registrations the person must have to meet qualifications for the [job] position, such as a current renewal card or a letter from the credentialing entity verifying that the person has met the required renewal criteria;

(5) - (6) (No change.)

(7) A statement signed and dated by the employee documenting that the employee [he] has read a copy of the operational policies required by §749.103 of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?).[-]

~~{(A) Operational policies; and}~~

~~{(B) Personnel policies;}~~

(8) A statement signed and dated by the employee indicating ~~[that:]~~

~~{(A) the [The] employee must immediately report any suspected incident of child abuse, neglect, or exploitation to the Texas [Child] Abuse and Neglect Hotline and the agency's administrator or administrator's designee; [and}~~

~~{(B) The date the employee attended pre-service training in measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploita-~~

tion, as required by §749.881(3) of this title (relating to What curriculum components must be included in the general pre-service training?);

(9) - (10) (No change.)

(11) A record of training, including the date of the training, the number of [and] training hours, and the curriculum covered;

(12) Any documentation of the person's performance [tenure] with the agency; and

(13) The date and reason for the person's separation [from the agency], if applicable.

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## DIVISION 4. CLIENT RECORDS

### 40 TAC §§749.571, 749.573, 749.577, 749.581, 749.585

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.571. *What client records must I maintain?*

You must maintain master records for all clients. The records must be individualized, current, and complete. The master record may include electronic records [in §749.531 of this title (relating to If I keep electronic records, what procedures must I have for those records?)].

§749.573. *Where must I maintain active master records for clients?*

(a) - (b) (No change.)

(c) You must maintain a master list of active client records with a notation of the [and their] location of those records in the main office of the agency.

§749.577. *What information must an active child record include?*

For each child, the active record must include:

(1) The child's full name and another method of identifying the child, such as a client number; and

(2) Documentation of known allergies and chronic conditions on the exterior of the child's record or in another place [location] where the information is clearly visible to persons with access to the record, including a notation of "no known allergies" when applicable. [; and]

{(3) The date of each data entry and the name of the person who makes the data entry.}

§749.581. *Where must I maintain archived master [client] records for clients?*

(a) You must maintain archived client records at the main office, the branch office that served the client, [agency] and/or in a central administratively designated location.

(b) - (c) (No change.)

(d) You must maintain a master list of archived client records with a notation of the [and their] location of those records in the main office of the agency.

§749.585. *How long must I maintain client records?*

(a) - (b) (No change.)

(c) You must maintain records for verified foster homes for at least five years after the foster home is closed. This includes foster homes that did not receive placements.

(d) (No change.)

(e) You must maintain records for applicants for foster or adoptive homes whom you did not verify or approve for at least one year after denial of the application.

(f) You do not have to maintain records of foster or adoptive home applicants who drop out before the completion of a home screening [study].

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## SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS

### DIVISION 1. GENERAL REQUIREMENTS

#### 40 TAC §749.601

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

§749.601. *What must my written professional staffing plan include?*

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

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## DIVISION 2. CHILD-PLACING AGENCY ADMINISTRATOR

### 40 TAC §749.633, §749.635

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

*§749.633. Can a child-placing agency administrator be an administrator for two residential child-care operations?*

A child-placing agency administrator can be an administrator for two residential child-care operations, including a general residential operation or residential treatment center, if:

- (1) (No change.)
- (2) The size and scope of the operations [~~operation~~] are manageable by one person, which is clarified in the written professional staffing plans;
- (3) (No change.)
- (4) At least one child-placing agency is managing 25 or fewer foster homes[; if acting as the administrator for two child-placing agencies].

*§749.635. What responsibilities must the child-placing agency administrator [designated to be responsible for the administration of the agency] have?*

The child-placing agency administrator must:

- (1) Have daily supervision and overall administrative responsibility for all of your offices, including your main office and any branch offices; and[-]
- (2) Be responsible for or assign responsibility for:
  - (A) Administering and managing the agency according to your [~~the~~] policies [~~adopted by the governing body~~];
  - (B) (No change.)
  - (C) Personnel matters, including hiring, assigning duties, training, supervision, evaluation of employees, and terminations; [~~and~~]
  - (D) Ensuring persons whose behavior or health status presents a danger to children are not allowed at the agency or foster homes; and[-]

(E) Administering and managing your approved agency plans as stated in §749.101(3) and (4) of this title (relating to What plans must I submit for Licensing's approval as part of the application process?). These plans:

(i) Evaluate the effectiveness of your system for meeting the rules of this chapter; and

(ii) Ensure the investigation of reports of minimum standards violations, upon our request.

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## DIVISION 3. CHILD PLACEMENT STAFF AND CHILD PLACEMENT MANAGEMENT STAFF

### 40 TAC §§749.663, 749.667, 749.669, 749.673, 749.675, 749.679

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

*§749.663. What are the responsibilities of child placement staff?*

(a) Child placement staff providing foster care services are responsible for:

- (1) - (2) (No change.)
- (3) Managing the case of a child, including:
  - (A) (No change.)
  - (B) Maintaining [~~Stewarding~~] direct contact with the child and the foster parents or other caregivers; and
  - (C) Performing any additional case management activities, including conducting and documenting supervisory visits for compliance with §749.2815 of this title (relating to How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?);

(4) - (5) (No change.)

(b) Child placement staff providing adoption services are responsible for:

(1) - (2) (No change.)

(3) Managing the case of a child, including:

(A) (No change.)

(B) Maintaining ~~[Stewarding]~~ direct contact with the child and the foster parents, adoptive parents, or other caregivers; and

(C) (No change.)

(4) - (5) (No change.)

~~[(e) Child placement management staff may directly perform any of these responsibilities.]~~

§749.667. *What are the responsibilities of child placement management staff?*

Child placement management staff must:

(1) Review and approve:

(A) - (B) (No change.)

(C) Investigation findings of minimum standards deficiencies that Licensing requested you conduct; and

(D) (No change.)

(2) Supervise child placement staff ~~[less qualified or experienced employees]~~, if any, including planning for the ~~staff's~~ ~~[employee's]~~ professional development and taking any other appropriate action in regard to their child-placing decisions.

(3) Directly perform the responsibilities of the child placement staff, as appropriate (e.g. the child placement staff is absent or unavailable).

§749.669. *How do child placement management staff document approval?*

Child placement management staff must review and approve by signing and dating the following documents:

(1) - (2) (No change.)

(3) Foster and adoptive home screenings ~~[studies]~~;

(4) Investigation reports of minimum standards deficiencies that Licensing requested you conduct;

(5) - (7) (No change.)

(8) Any restrictions you impose ~~[imposed]~~ on the child:

(A) For ~~[for]~~ more than 30 days that ~~[have not been approved by]~~ the treatment director or service planning team has not approved; and

(B) That ~~[any monthly re-evaluations of a restriction that]~~ continues for more than 30 days and must be re-evaluated by the child placement management staff;

(9) - (11) (No change.)

§749.673. *What are the qualifications that an employee must have to perform child placement activities?*

In addition to the requirements that all employees must meet, employees who perform child placement activities must meet the following qualifications:

Figure: 40 TAC §749.673

§749.675. *What are the qualifications an employee must have to perform child placement management activities?*

In addition to the requirements that all employees must meet, employees who perform child placement management activities must meet the following qualifications:

Figure: 40 TAC §749.675

§749.679. *What are the requirements for the caseloads of my child placement staff?*

There are no caseload requirements for child placement staff; however, you must:

(1) Maintain compliance with §749.305(a)(2) of this title (relating to What are the requirements for administrators and treatment directors for a main office and branch offices?), if applicable; and

(2) Ensure that all caseloads [ensure manageable caseloads that] allow child placement staff to meet the needs of children in care and adequately support foster and adoptive homes.

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### DIVISION 3. CHILD PLACEMENT STAFF

#### 40 TAC §749.671, §749.681

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.671. *What is a corrective or adverse action?*

§749.681. *What ethical requirements must I follow when conducting a foster home screening, an adoptive home screening, or a post-placement adoptive report?*

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### DIVISION 4. TREATMENT DIRECTOR

#### 40 TAC §749.725

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.725. *What qualifications must a treatment director have?*

(a) A treatment director that provides or oversees treatment services for children with intellectual disabilities [~~mental retardation~~] or children with autism spectrum disorder [~~pervasive developmental disorders~~] must be:

(1) (No change.)

(2) Certified by the Texas Education Agency as an education diagnostician, have a master's degree in special education or a human services field, and have three years of experience working with children with intellectual disabilities [~~mental retardation~~] or autism spectrum [~~a pervasive developmental~~] disorder.

(b) - (c) (No change.)

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## DIVISION 6. CONTRACT STAFF AND VOLUNTEERS

### 40 TAC §§749.761, 749.767, 749.769

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.042.

§749.761. *What are the requirements for a volunteer?*

(a) (No change.)

(b) The personnel record must include a statement signed and dated by the volunteer indicating the volunteer [~~he~~] must immediately

report any suspected incident of abuse, neglect, or exploitation to the Texas [Child] Abuse and Neglect Hotline and the agency's administrator or administrator's designee. An internal reporting policy may not require the delegation of the person's responsibility to report suspected abuse, neglect, or exploitation.

~~[(e) If the volunteer provides short-term services through an agency or an organization, you must be aware of and approve the organization or agency's policies on volunteer short-term services before the volunteer can have contact with children.]~~

§749.767. *Is a volunteer who is part of another [agency or] organization subject to my policies and procedures?*

If the volunteer provides short-term services through [~~is a part of~~] an organization, including another agency, that provides screening, training, and supervision, you do not have to duplicate these services. However, you must determine that the volunteer program's policies and procedures are adequate to protect the health and safety of children [~~meet the intent of these rules~~], before the volunteer can have contact with children.

§749.769. *Can I use a volunteer who is on probation or parole or is performing community service through the courts?*

No person may provide services to your agency if that person is on probation or parole or is performing community service through the courts because of criminal activity, including as an alternative to incarceration. This prohibition applies to a person who meets the definition of "volunteer" in §749.43 of this title (relating to What do certain words and terms mean in this chapter?) or any other person whom you are not compensating, including persons providing any type of service even when the person does not have unsupervised access to children in care.

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### 40 TAC §749.769, §749.771

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.042.

§749.769. *Can I use a volunteer that is on probation, parole, or referred for community service through the courts?*

§749.771. *Is a family or organization that invites a child in care for an overnight or weekend a "volunteer"?*

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## SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

### DIVISION 1. DEFINITIONS

#### 40 TAC §749.801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.801. *What do certain words and terms mean in this subchapter?*

The words and terms used in this subchapter have the following meanings:

~~[(1) CEU--Continuing education unit.]~~

~~(1) [(2)] CPR--Cardiopulmonary resuscitation.~~

~~(2) [(3)] Hours--Clock hours.~~

~~(3) [(4)] Instructor-led training--Training that is characterized by the communication and interaction that takes place between the student and the instructor. It [and] must include an opportunity for the student to [timely] interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must be able to answer questions, provide[, including answering questions, providing] feedback on skills practice, provide [providing] guidance or information on additional resources, and proactively interact [interacting] with students. Examples of this type of training include classroom training, on-line distance learning, video-conferencing, or other group learning experiences.~~

~~(4) [(5)] Self-instructional training--Training that is designed to be used by one individual working alone and at the individual's [their] own pace to complete lessons or modules. Examples of this type of training include computer based training, written materials, or video training.~~

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## DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

#### 40 TAC §§749.861, 749.867, 749.869

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.861. *What are the pre-service experience requirements for caregivers?*

(a) (No change.)

(b) Before a caregiver can provide care to a child receiving treatment services, you must ensure that the caregiver has the experience to care for the child's treatment need. If a caregiver does not have the necessary experience, your child-placement management staff must prescribe a regimen of specific child-care experience that the caregiver must complete before you place a child with treatment needs in the caregiver's home, including a minimum of eight hours of observations of interactions with children receiving similar treatment services as the prospective caregiver would be providing.

(c) (No change.)

§749.867. *Must I provide pre-service training to a caregiver or employee who was previously a caregiver or employee for a residential child-care operation [child-placing agency]?*

(a) A caregiver is exempt from completing the eight hours of general pre-service training if the caregiver [he] has been a caregiver for a residential child-care operation during the past 12 months.

(b) A caregiver or employee is exempt from completing the pre-service training regarding emergency behavior intervention if the caregiver or employee [he]:

(1) - (3) (No change.)

(c) (No change.)

§749.869. *What are the instructor requirements for providing pre-service training?*

(a) The training must be instructor-led.

(b) ~~[(a)]~~ A qualified instructor must deliver the pre-service training. A qualified instructor must have adequate knowledge and experience in the topic the instructor delivers.

~~[(b) The training must be instructor led.]~~

(c) - (d) (No change.)

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## DIVISION 4. GENERAL PRE-SERVICE TRAINING

### 40 TAC §749.881

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

*§749.881. What curriculum components must be included in the general pre-service training?*

The general pre-service training curriculum must include the following components:

(1) Topics appropriate to the needs of children for whom the caregiver will be providing care, such as developmental stages of children, fostering children's self-esteem, constructive guidance and discipline of children, water safety, and strategies and techniques for monitoring and working with these children; ~~and normalcy~~];

(2) - (6) (No change.)

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## DIVISION 5. PRE-SERVICE TRAINING REGARDING EMERGENCY BEHAVIOR INTERVENTION

### 40 TAC §749.901

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

*§749.901. If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?*

If you do not allow the use of emergency behavior intervention, your pre-service training curriculum regarding emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques of less restrictive interventions, including the following components:

(1) - (6) (No change.)

(7) Less restrictive strategies caregivers can use to work with oppositional children; ~~and~~

(8) Addressing circumstances when all de-escalation strategies fail; and

(9) ~~[(8)]~~ The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.

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## DIVISION 6. ANNUAL TRAINING

### 40 TAC §§749.933, 749.935, 749.937, 749.939, 749.941, 749.945

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.933. *When must an employee or caregiver complete the annual training?*

(a) Each person must complete the annual training:

(1) Within 12 months from when you hire the person as an employee or caregiver or verify the person as a foster parent, whichever is applicable [the date of his employment]; and

(2) During each subsequent 12-month period after the anniversary date of hire or verification.

(b) Alternatively, you have the option of prorating the person's annual training requirements from the date of hire or verification [employment] to the end of the calendar year or the end of the agency's fiscal year and then beginning a new 12-month period that coincides with the calendar or fiscal year.

(c) (No change.)

§749.935. *What types of hours or instruction can be used to complete the annual training requirements?*

(a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or Continuing Education Units [CEUs] earned through:

(1) - (6) (No change.)

(b) For annual training hours, you may count:

(1) The hours of annual training that a person received at another [child-placing agency; general] residential child-care operation[; or residential treatment center], if the person:

(A) - (B) (No change.)

(2) - (3) (No change.)

(4) Any [The] hours of pre-service training that the person earned [earns] in addition to the required pre-service hours, although you may not carry over more than 10 hours of a person's pre-service training hours for use as annual training hours during the upcoming year[-]. For example, if a person completes 24 hours of pre-service emergency behavior intervention training, and is required to obtain 16 hours, that person may count eight of the hours toward annual training requirements[;]

(5) - (6) (No change.)

(c) For annual training hours, you may not count:

(1) (No change.)

(2) Required pre-service [Pre-service] training;

(3) - (4) (No change.)

(d) No more than one-half [one-third] of the required annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from reading written materials.

(e) (No change.)

§749.937. *Does Licensing approve training resources or trainers for annual training hours?*

No. We do not approve or endorse training resources or trainers for training hours. You must, however, ensure that [the] employees and caregivers receive reliable training relevant to the population of children served, which includes for both instructor-led training and self-instructional training:

(1) - (4) (No change.)

§749.939. *What are the instructor requirements for providing annual training?*

(a) (No change.)

(b) Transportation safety training must be instructor-led and provided by:

(1) - (6) (No change.)

§749.941. *What areas or topics are appropriate for annual training? Other than the mandated annual training topics, annual [Annual] training must be in areas appropriate to the needs of children for whom the caregiver provides care, which may include:*

~~[(1) Trauma informed care;]~~

(1) ~~[(2)]~~ Developmental stages of children;

(2) ~~[(3)]~~ Constructive guidance and discipline of children;

(3) ~~[(4)]~~ Fostering children's self-esteem;

(4) ~~[(5)]~~ Positive interaction with children;

(5) ~~[(6)]~~ Strategies and techniques for working with the population of children served;

~~[(7) Normalcy;]~~

(6) ~~[(8)]~~ Supervision and safety practices in the care of children, including making reasonable and prudent parenting decisions regarding a foster child's participation in childhood activities; ~~[ø]~~

(7) ~~[(9)]~~ Preventing the spread of communicable diseases; ~~[-]~~

(8) Water Safety; or

(9) Administration of medication.

§749.945. *For a caregiver that administers psychotropic medication, what annual training is required?*

If you permit a caregiver to administer psychotropic medication:

(1) The caregiver's [His] annual training must meet the psychotropic medication training requirements in §749.885 of this title (relating to Are there additional general pre-service training requirements for a caregiver that administers psychotropic medication?); and

(2) The caregiver [He] must obtain annual psychotropic medication training no later than 12 months after the caregiver's [his] last psychotropic medication training.

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## SUBCHAPTER G. CHILDREN'S RIGHTS

### 40 TAC §749.1003

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department

of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

§749.1003. *What rights does a child in care have?*

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#### 40 TAC §§749.1003, 749.1005, 749.1007, 749.1011, 749.1021

The new section and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC §40.042.

§749.1003. *What rights does a child in care have?*

(a) A child's rights are cumulative of any other rights granted by law or other Licensing rules.

(b) The following categories include the child's rights that you must adhere to:

(1) Safety and care, including:

(A) The right to good care and treatment that meets the child's needs in the most family-like setting possible;

(B) The right to be free from abuse, neglect, and exploitation; and

(C) The right to fair treatment;

(2) Family contacts, including the right to maintain regular contact with the child's parents and siblings, unless restrictions are necessary because of the child's best interest, the decision of an appropriate professional, or a court order;

(3) Living a normal life, including:

(A) The right to speak and be spoken to in the child's own language, including Braille if the child is blind or sign language if the child is deaf. This should also occur within a reasonable time after an emergency admission of a child, if applicable. You must make every effort to place a child with foster parent(s) who can communicate with the child. If these efforts are not successful, you must document in the preliminary service plan your plan to meet the communication needs of the child;

(B) The right to receive educational services appropriate to the child's age and developmental level;

(C) The right to have the child's religious needs met. The child has the right to choose a church or not to practice a religion;

(D) The right to participate in childhood activities, including foster family activities and activities away from the foster home and the foster parents, that are appropriate for the child's age, maturity, and developmental level;

(E) The right to privacy, including sending and receiving unopened mail, making and receiving phone calls, keeping a personal journal, and having visitors, unless the child's best interest, appropriate professionals, or court order necessitates restrictions;

(F) The right to personal care, hygiene, and grooming equipment and supplies and training in how to use them;

(G) The right to have comfortable clothing, which is suitable to the child's age and size and similar to the clothing of other children in the community. Teenagers should have reasonable opportunities to select the clothing;

(H) The right to clothing that protects the child against the weather;

(I) The right to have personal items at the child's home and to get additional things within reasonable limits;

(J) The right to personal space in the child's bedroom to store clothes and belongings;

(K) The right to be informed of search policies and be free of unreasonable searches and unreasonable removal of personal items;

(L) Depending on the child's age and maturity, the right to seek employment, keep the child's own money, have a bank account in the child's name, and get paid for any work done for the agency or home as part of the child's service plan or vocational training, with the exception of assigned routine duties that relate to the child's living environment, such as cleaning the child's room, or other chores, or work assigned as a disciplinary measure;

(M) The right to consent in writing before taking part in any publicity or fund raising activity for the foster home or agency, including the use of the child's photograph;

(N) The right to refuse to make public statements showing gratitude to the foster home or agency; and

(O) The right to not be pressured to get an abortion, give up her child for adoption, or parent her child, if applicable;

(4) Discipline, including:

(A) The right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating treatment or punishment. This means the child must not be:

(i) Shaken;

(ii) Subjected to or threatened with corporal punishment, including spanking or hitting the child;

(iii) Forced to do unproductive work that serves no purpose except to demean the child, such as moving rocks from one pile to another or digging a hole and then filling it in;

(iv) Denied food, sleep, a bathroom, mail, or family visits as punishment;

(v) Subjected to remarks that belittle or ridicule the child or the child's family;

(vi) Threatened with the loss of placement or shelter as punishment; and

(vii) Subjected to demeaning behavior to embarrass, control, harm, intimidate, or isolate the child. "Demeaning behavior" may include using physical force, rumors, threats, or inappropriate comments;

(B) The right to discipline that is appropriate to the child's age, maturity, and developmental level; and

(C) The right to have restrictions or disciplinary policies explained to the child at admittance and when the measures are imposed;

(5) Plans for the child while in care, including:

(A) The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning; and

(B) The right to actively participate in the development of the child's service plan within the limits of the child's comprehension and ability to manage the information. The child has the right to a copy or summary of the plan. A child 14 years of age or older has the right to review and sign the service plan;

(6) Medical care and records, including:

(A) The right to medical, dental, vision, and mental health care and developmental services that adequately meet the child's needs. The right to request that the care or services be separate from adults (other than young adults) who are receiving services;

(B) The right to be free of unnecessary or excessive medication; and

(C) The right to confidential care and treatment, including keeping medical records and agency records private and only discussing them when it is about the child's care; and

(7) Complaints, including the right to make calls, reports, or complaints without interference, coercion, punishment, retaliation, or threats of punishment or retaliation. The child may make these calls, reports, or complaints anonymously. Depending upon the nature of the complaint, the child has the right to call, report, or complain to:

(A) The DFPS Texas Abuse/Neglect Hotline at 1-800-252-5400;

(B) The HHSC Ombusman for Children and Youth Currently in Foster Care at 1-844-286-0769;

(C) The DFPS Office of Consumer Affairs at 1-800-720-7777; or

(D) Disability Rights of Texas at 1-800-252-9108.

*§749.1005. How must I inform a child and the child's parents of their rights?*

(a) - (c) (No change.)

(d) The person you are informing of the child's rights must sign a statement indicating that the person has read and understands these rights. A copy of a timely signed "CPS Rights of Children and Youth in Foster Care" will meet this standard. You must put the signed copy in the child's record.

*§749.1007. What are a child's rights regarding education?*

(a) A child must have an appropriate education through participation in an educational/vocational program in the most appropriate

and least restrictive educational settings, for example: attending regular classes conducted in an accredited elementary, middle, or secondary school within the community or home schooling.

(b) (No change.)

*§749.1011. What right does a child have regarding contact with siblings?*

(a) - (b) (No change.)

(c) When you restrict sibling contact, you must include justification in the child's record. Restrictions imposed by you that continue for more than 60 days must be re-evaluated every 60 days by your child placement management staff, who also must: [If the restriction lasts more than 90 days, you must document the justification for continuing the restriction in the child's record at least every 90 days.]

(1) Explain the reasons for the continued restrictions to the child; and

(2) Document the reasons in the child's record.

(d) (No change.)

*§749.1021. What techniques am I prohibited from using on a child?*

Certain [You may not use any of the following] techniques must not be used on a child, including:

(1) - (5) (No change.)

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## SUBCHAPTER H. FOSTER CARE SERVICES: ADMISSION AND PLACEMENT DIVISION 1. ADMISSIONS

### 40 TAC §§749.1107, 749.1109, 749.1111, 749.1113, 749.1115

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

*§749.1107. What information must I document in the child's record at the time of admission?*

(a) You must include the following in the child's record at the time of admission:

(1) The child's name, gender, race, religion, and date of birth~~], and birthplace];~~

~~[(2) Court orders establishing who is the managing conservator for the child, if applicable;]~~

(2) ~~[(3)]~~ The name, address, and telephone number of the managing conservator(s), the primary caregivers for the child, any person with whom the child is allowed to leave the foster home, and any other individual who has the legal authority to consent to the child's medical care;

(3) ~~[(4)]~~ The names, addresses, and telephone numbers of biological or adoptive parents, unless parental rights have been terminated;

(4) ~~[(5)]~~ The names, addresses, and telephone numbers of siblings;

(5) ~~[(6)]~~ The date of admission;

(6) ~~[(7)]~~ Medication the child is taking;

(7) ~~[(8)]~~ The child's immunization record;

(8) ~~[(9)]~~ Allergies, such as food, medication, sting, and skin allergies;

(9) ~~[(10)]~~ Chronic health conditions, such as asthma or diabetes;

(10) ~~[(11)]~~ Known contraindications ~~[contra-indications]~~ of the use of restraint;

(11) ~~[(12)]~~ Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving;

(12) ~~[(13)]~~ Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s);

(13) ~~[(14)]~~ A copy of the placement agreement, if applicable; and

(14) ~~[(15)]~~ Documentation of the attempt to notify the parent of the child's location as required by §749.1113(c)(3) ~~[\$749.1113(e)]~~ of this title (relating to What information must I share with the parent at the time of placement?), if applicable.

(b) (No change.)

§749.1109. *What is a placement agreement?*

(a) A placement agreement is your agreement with a child's parent or the child that defines your roles and responsibilities and authorizes you to obtain or provide services for the child. The placement agreement must include:

(1) Authorization permitting you to care for the child;

(2) A medical consent form signed by a person authorized by the Texas Family Code to provide consent; and

(3) The reason for placement and anticipated length of time in care.

(b) A placement agreement must be signed by the child's parent, except as provided in subsection (c).

(c) For a transitional living program, a child 16 years old or older may sign the placement agreement on the child's own behalf, as provided in the Texas Family Code §32.203, without the consent of the child's parent if the child:

(1) Resides separate and apart from the child's parent and manages the child's own financial affairs;

(2) Is unmarried and pregnant; or

(3) Is unmarried and a parent.

§749.1111. *What orientation must I provide a child?*

(a) (No change.)

(b) Orientation must include information about your policies on the following:

(1) - (11) (No change.)

(12) Internal grievance [Grievance] procedures.

(c) Orientation must include information on how to:

(1) Make complaints to outside agencies; and

(2) Contact parties to a child's case (i.e. caseworker, attorney ad litem, guardian ad litem, CASA worker, etc.).

(d) ~~[(e)]~~ You must document in the child's record when the orientation occurred, any item that the orientation did not include, and the reason that the orientation did not include that item.

§749.1113. *What information must I share with the parent at the time of placement?*

(a) At admission, you must provide the following policies to the parent placing the child:

(1) Fee policies;

(2) Emergency behavior intervention policies;

(3) Discipline policies;

(4) Adoption policies, if applicable; and

(5) Any other policies required by us, upon request of the parent.

~~[(a) The parent must be able to determine whether your program and/or practices are appropriate for the child and can meet the child's needs.]~~

(b) At admission, you must [review and] provide and explain the following written information and policies [materials] to the parent placing the child [that explain]:

(1) (No change.)

(2) Your policies regarding the:

(A) Use of volunteers or sponsoring families, if applicable;

(B) - (C) (No change.)

(3) Information about the [The] parent's right to refuse to or withdraw consent for a child to participate in:

(A) - (B) (No change.)

(c) If you sign a placement agreement for a transitional living program with a child as specified in §749.1109(c) of this title (relating to What is a placement agreement?), then you:

(1) Must share the policies noted in subsection (a) with the child, instead of the parent;

(2) Do not have to comply with subsection (b), but you must provide and explain to the child your policies regarding the:

(A) Use of volunteers or sponsoring families;

(B) Involvement of the child in any publicity and/or fund raising activity for the agency; and

(C) Child's right to refuse to or withdraw consent to participate in:

(i) Research programs; and/or

(ii) Publicity and/or fund raising activities for the agency; and

(3) Must [You must] attempt to notify the child's parent [of a child that you admit to a transitional living program] of the child's location, if the child was admitted without the consent of the parent[; as provided in Texas Family Code §32.203].

§749.1115. *What information must I provide caregivers when I admit a child?*

(a) (No change.)

(b) You must inform appropriate caregivers of any special needs, such as medical or dietary needs or conditions or supervision needs, and document that the information was shared with the caregiver.

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

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Trevor Woodruff

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## DIVISION 2. ADMISSION ASSESSMENT

### 40 TAC §§749.1131, 749.1133, 749.1135

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1131. *When must I complete the admission assessment?*

You must complete a non-emergency admission assessment prior to admission [according to the time frames required in §749.1133 of this title (relating to What information must an admission assessment include?)]. For an emergency admission assessment, see §749.1187 of this title (relating to For an emergency admission, when must I complete all of the requirements for an admission assessment?)].

§749.1133. *What information must an admission assessment include?*

(a) (No change.)

(b) Prior to a child's non-emergency admission, an admission assessment must be completed which includes:

(1) - (2) (No change.)

(3) A description of the child's behavior, including appropriate and maladaptive behavior, and any high-risk behavior ~~[posing a risk to self or others]~~;

(4) - (5) (No change.)

(6) Current mental health and substance abuse status, including available results of any psychiatric evaluation, psychological evaluation, or psychosocial assessment ~~[or psychiatric examination]~~;

(7) - (8) (No change.)

(9) Any applicable requirements of §749.1135 of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?);

(10) - (14) (No change.)

(15) A determination of whether and how you can meet the ~~[immediate]~~ needs of the child;[;] and

(16) (No change.)

(c) Prior to completing a child's initial service plan, the following information must be added to the admission assessment:

(1) - (13) (No change.)

(14) A determination of whether and how you can meet the needs of the child, based on an evaluation of the child's special strengths and needs; and

(15) (No change.)

(d) (No change.)

§749.1135. *What are the additional admission assessment requirements when I admit a child for treatment services?*

When you admit a child for treatment services, you must do the following, as applicable:

Figure: 40 TAC §749.1135

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## DIVISION 3. REQUIRED ADMISSION INFORMATION

### 40 TAC §749.1151, §749.1153

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1151. *What are the medical requirements when I admit a child into care?*

(a) You must ensure that the child has a medical examination by a health-care professional within 30 days after the date of admission. This exam is not required if you have documentation that the child has had a medical examination within the past year, including documentation in the child's health passport if the child [he] is in the department's [DFPS] conservatorship.

(b) - (d) (No change.)

§749.1153. *What are the dental requirements when I admit a child into care?*

(a) (No change.)

(b) A child three years old or older must have a dental appointment scheduled with a dentist within 30 days after the date of admission, and the examination must occur within 90 days after the date of admission. A dental examination is not required if you have documentation that the child has had a dental examination within the past year, including documentation in the child's health passport if the child [he] is in the department's [DFPS] conservatorship.

(c) (No change.)

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## DIVISION 4. EMERGENCY ADMISSION

### 40 TAC §749.1183, §749.1187

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1183. *What constitutes an emergency admission to my child-placing agency?*

It is an emergency admission if: [You may admit a child on an emergency basis if the child:]

(1) You must place the child within 72 hours;

(2) [~~(4)~~] The child was [Is being] removed from a situation involving alleged abuse or neglect;

(3) [~~(2)~~] The child is [Is] an alleged perpetrator of abuse and cannot be served in the child's current placement due to the child's [his] perpetrating behaviors

(4) [~~(3)~~] The child displays [~~Displays~~] behavior that is an immediate danger to self [himself] or to others and cannot function or be served in his current setting;

(5) [~~(4)~~] The child was [Is] abandoned and, after exercising reasonable efforts, the child's identity cannot be immediately determined. You must document the [The] efforts made to obtain information on the child's identity [must be documented] in the child's record;

(6) [~~(5)~~] The child was [Is] removed from the child's [his] home or placement, and there is an immediate need to find a residence for the child;

(7) [~~(6)~~] A law enforcement or juvenile probation officer releases the child [Is released] to your authorized child-placing agency [by a law enforcement or juvenile probation officer]; or

(8) [~~(7)~~] The child is otherwise [Is] without adult care.

§749.1187. *For an emergency admission, when must I complete all of the requirements for an admission assessment?*

(a) (No change.)

(b) In an emergency admission of a child receiving treatment services, the child must not continue in care for more than 30 days after the date of admission unless the child has received the required [psychological,] psychiatric evaluation, psychological evaluation, psychosocial assessment [psychometric], or medical evaluation that is required by §749.1135 of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?), and the evaluation indicates manifestations of the disorder requiring treatment services. All evaluations must be signed, dated, and documented in the child's record.

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## DIVISION 7. POST-PLACEMENT CONTACT

### 40 TAC §749.1291

The amendment proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.1291. *What are the requirements for contact between child placement staff and children in foster care?*

(a) (No change.)

(b) For children receiving treatment services for primary medical needs, child placement staff or a nurse ~~[on staff]~~ must have face-to-face contact with a child in care twice every month with no more than 20 days between visits [every 15 days]. However, staff can miss two visits per year, provided a child does not go longer than 30 days without a visit.

(c) At least half of the contacts must occur in the foster home.

(d) ~~[(e)]~~ These contacts are to ensure the:

- (1) Child is safe;
- (2) Needs of a child are being met; and
- (3) Placement continues to be appropriate.

(e) ~~[(d)]~~ If the child is able to communicate in a meaningful way, the contact with the child must:

- (1) Be for a length of time sufficient to address the child's needs and determine the appropriateness of the placement;
- (2) Provide an opportunity to meet in private; and
- (3) Provide an opportunity for the child to express his feelings about how the placement is working out.

(f) ~~[(e)]~~ If the child is non-verbal or pre-verbal, the contact with the child must be for a length of time sufficient for an appropriate observation of the child and the child's placement, including an assessment of any changes in behavior or developmental progress or delays as well as a verification that the placement is meeting the child's needs as specified in the service plan.

(g) ~~[(f)]~~ The required contacts must be significant and must be documented in the child's record. The documentation in the child's record must be sufficient to address the requirements of subsections ~~[(d) and]~~ (e) and (f) of this section.

(h) ~~[(g)]~~ Child placement management staff must review and approve documentation of contacts.

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## SUBCHAPTER I. FOSTER CARE SERVICES: SERVICE PLANNING, DISCHARGE DIVISION 1. SERVICE PLANS

### 40 TAC §§749.1301, 749.1307, 749.1309, 749.1312, 749.1313, 749.1317, 749.1321, 749.1323

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.042.

§749.1301. *What are the requirements for a preliminary service plan?*

(a) You must complete a preliminary service plan that addresses the immediate needs of the child within 72 hours, such as supervision requirements, enrolling the child in school or obtaining needed medical care or clothing; ~~within 72 hours of the child's admission].~~

(b) - (f) (No change.)

§749.1307. *When must I complete an initial service plan?*

You must complete the initial service plan within 45 [40] days after you admit the child.

§749.1309. *What must a child's initial service plan include?*

(a) (No change.)

(b) The child's initial service plan must be documented in the child's record and include those items that a preliminary plan must include (see §749.1301 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:  
Figure: 40 TAC §749.1309(b)

§749.1312. *Can the service planning team discuss and develop a child's service plan in separate meetings?*

Yes, the service planning team may meet in one meeting, two or more meetings, or in separate meetings, provided that each service planning team member is informed of the discussions and comments regarding the child's service plan that were made at each meeting.

§749.1313. *When must I inform the child's parents and foster parents of an initial service plan meeting?*

(a) You must give the child's parents and foster parents at least two weeks advance notice of the review, or have documentation that the notice was given at least two weeks in advance of the review.

(b) (No change.)

§749.1317. *What roles do professional service providers have in service planning?*

The roles of professional service providers in service planning include:  
Figure: 40 TAC §749.1317

§749.1321. *With whom do I share the initial service plan?*

(a) You must give a copy or summary of the initial service plan to the:

- (1) Child, when appropriate. All children 14 years old or older must review and sign the initial service plan. If the child disagrees

with the service plan or refuses to sign the service plan, you must document this information;

(2) - (3) (No change.)

(b) - (c) (No change.)

*§749.1323. When must I implement a service plan?*

You must implement and follow an initial service plan as soon as all of the service planning team members have reviewed and signed the plan, but no later than 15 [~~10~~] days after the date of the scheduled service-planning meeting involving the parents, foster parents, and the child.

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## DIVISION 2. SERVICE PLAN REVIEW AND UPDATES

### 40 TAC §§749.1331, 749.1335, 749.1336, 749.1339

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.042.

*§749.1331. How often must I review and update a service plan?*

Except for when the child's placement within your agency changes because of a change in the child's needs, you must review and update the service plan as follows:

Figure: 40 TAC §749.1331

*§749.1335. How do I review and update a service plan?*

To review and update a service plan, you must:

(1) - (7) (No change.)

~~[(8) Determine for children receiving treatment services for emotional disorders, pervasive developmental disorders, or primary medical needs whether to:]~~

~~[(A) Continue the placement;]~~

~~[(B) Continue the placement as child-care services;]~~

~~[(C) Transfer the child to a less restrictive setting; or]~~

~~[(D) Refer the child to an inpatient hospital;]~~

~~(8) [(9)] Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:~~

~~(A) The frequency, patterns, and effectiveness of types of emergency behavior interventions;~~

~~(B) Strategies to reduce the need for emergency behavior interventions overall; and~~

~~(C) Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable;~~

~~(9) [(10)] Document in the child's record the review and update of the plan; and~~

~~(10) [(11)] Document the names of the persons participating in the review and update.~~

*§749.1336. Can the child-placing agency continue to review and update a child's previous service plan without creating a new service plan?*

Yes, a single service plan that continues throughout the time a child is in residential child care is acceptable, as long as you:

(1) Complete a preliminary service plan as required by §749.1301 of this title (relating to What are the requirements for a preliminary service plan?) each time a child is admitted into your care; and

(2) Continue to comply with the service plan review and update requirements in this Division of this Subchapter (relating to Service Plan Reviews and Updates).

*§749.1339. How often must I re-evaluate the intellectual functioning of a child receiving treatment services for intellectual disabilities [mental retardation]?*

(a) - (b) (No change.)

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## DIVISION 3. DISCHARGE AND TRANSFER PLANNING

### 40 TAC §§749.1363, 749.1369, 749.1371

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1363. *Who must plan a child's non-emergency discharge or transfer?*

(a) - (c) (No change.)

(d) If a child in your care is not receiving treatment services, you must inform the child [him] of the [his] non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your licensed child-placing agency administrator or child placement management staff has clear justification for not giving the child [him] such notice. The licensed child-placing agency administrator or child placement management staff who determines the justification for the child not having the advance notice of the discharge or transfer, must put the justification in writing and sign and date it. The justification must be in the child's record.

(e) If a child in your care is receiving treatment services, you must inform the child [him] of the [his] non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your treatment director, three members of the child's service planning team, or the child's psychiatrist or psychologist has a justification for not giving the child [him] such notice. Whoever determines the justification for the child not having the advance notice of the discharge or transfer must put the justification in writing and sign and date it. The justification must be in the child's record.

§749.1369. *How do I discharge or transfer a child who is an immediate danger to self [himself] or others?*

The child's caregiver(s) or the child placement staff must accompany the child to the receiving operation, agency, or person unless the child's parent or law enforcement transports the child.

§749.1371. *What must I document in the child's record at the time of a discharge or transfer?*

At the time of a discharge or transfer, you must document the following:

(1) - (2) (No change.)

(3) For discharge, the name, address, telephone number and relationship of the person to whom you discharge the child, unless the child legally consents to a [his] discharge. If the child legally consents to a [his] discharge and does not want to involve the child's parent(s), you must document this in the child's record;

(4) - (7) (No change.)

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## SUBCHAPTER J. FOSTER CARE SERVICES: MEDICAL AND DENTAL DIVISION 1. MEDICAL AND DENTAL CARE

40 TAC §§749.1401, 749.1409, 749.1415, 749.1421,  
749.1423, 749.1425, 749.1433

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1401. *What general medical requirements must my agency meet?*

(a) (No change.)

(b) The child's record must include a written record of each medical examination that consists of [specifying]:

(1) A copy of the results of the medical examination [The date of the examination];

~~[(2) The procedures completed;]~~

~~(2) [(3)]~~ The follow-up treatment recommended and any appointments scheduled;

~~(3) [(4)]~~ A notation of the [The] child's refusal to accept medical treatment, if applicable;

~~[(5) A copy of the results of the medical examination;]~~

~~(4) [(6)]~~ If the medical examination is a result of an injury or illness ~~[medical incident]~~, the documentation of the date, time, and circumstances surrounding the injury or illness [incident, including the date and time of the incident]; and

~~(5) [(7)]~~ Any other documentation provided by the health-care professional who performed the examination.

(c) For a child in the [DFPS] conservatorship of the department, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

(d) (No change.)

§749.1409. *What general dental requirements must my agency meet?*

(a) (No change.)

(b) The child's record must include a written record of each dental examination that consists of [specifying the]:

(1) A copy of the results of the dental examination [Date of the examination];

~~[(2) Procedures completed;]~~

~~(2) [(3)]~~ Follow-up treatment recommended and any appointments scheduled; and

~~(3) [(4)]~~ The child's refusal to accept dental treatment, if applicable.~~;~~ and

~~[(5) A copy of the results of the dental examination;]~~

(c) For a child in the [DFPS] conservatorship of the department, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

(d) (No change.)

§749.1415. *What health precautions must I take if a person in care, employee, caregiver, someone else in one of my foster homes, or someone else in my agency has a communicable disease?*

(a) - (b) (No change.)

(c) If a health-care professional diagnoses a person in your care with a communicable disease that is reportable to DSHS [Department of State Health Services (DSHS)], a health-care professional must authorize the person's participation in any routine activities [activity] at the foster home. The authorization must:

(1) - (2) (No change.)

(3) Include any specific instructions and precautions to be taken for the protection of others, if necessary.

(d) - (e) (No change.)

§749.1421. *What immunizations must a child in my care have?*

(a) Each child that you admit must meet and continue to meet applicable immunization requirements as specified by §42.043 of the Human Resources Code and the Department of State Health Services.

(b) You must maintain current immunizations records for each child in your care, including any immunization exemptions or exceptions. [For a child in DFPS conservatorship, documentation in the child's health passport is sufficient.]

(c) (No change.)

§749.1423. *What ~~are the~~ exemptions or exceptions are there concerning ~~from~~ immunization requirements?*

(a) A child may be exempt from [Exemptions for] immunization requirements for a medical reason and reason of conscience, including a religious belief. To claim an exemption, the person applying for the child's admission must meet criteria specified by:

(1) §42.043(d) and (d-1) [§42.043] of the Human Resources Code; or

(2) The Department of State Health Services rule [rules] in 25 TAC §97.62 (relating to Exclusions from Compliance).

(b) For some diseases, a child who previously had a disease and is accordingly naturally immune from it may qualify for an exception to the immunization requirements for the disease. To claim this exception, the person applying for the child's admission must meet the criteria specified by the Department of State Health Services rule in 25 TAC §97.65.

§749.1425. *What documentation is acceptable for an immunization record?*

(a) The documentation for an [An original or facsimile of the] immunization record must include the:

(1) Child's [The child's] name and birth date;

(2) Type of vaccine and [The] number of doses administered [and vaccine type];

(3) Month [The month], day, and year the child received each vaccination; and

(4) Name, address, and signature of the health-care professional that administered the vaccine. The [One of the] following are acceptable as a signature:

(A) A [signature or] rubber stamp signature or electronic signature from the health-care professional who administered the vaccine; or

(B) Another health-care professional's [A registered nurse's] documentation of the immunization that is provided [by a health-care professional], as long as the name and address of the health-care professional that administered the vaccine is [professional's name and qualifications are] documented.

(b) Appropriate documentation for [Documentation of] an immunization record on file at your agency may include an original or photocopy of [be]:

(1) The immunization [original] record;

~~(2) A photocopy;~~

(2) ~~(3)~~ An official immunization record generated from a state or local health authority, such as a registry;

(3) ~~(4)~~ A record received from school officials, including a record from another state; or

(4) ~~(5)~~ The child's health passport, for a child in the [DFPS] conservatorship of the department.

(c) The signature of the health-care professional that administered the vaccine is not required for subsection (b)(2) and (3).

§749.1433. *How often must the physician review a child's primary medical needs?*

(a) (No change.)

(b) The review must address:

(1) (No change.)

(2) Any new or changed orders regarding the items outlined in §749.1135 of this title (relating to What are the additional admission requirements when I admit a child for treatment services?).

(c) (No change.)

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## DIVISION 2. ADMINISTRATION OF MEDICATION

### 40 TAC §749.1463, §749.1469

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1463. *What are the ~~[medication]~~ requirements for administering prescription medication ~~[must caregivers meet]~~?*

- (a) (No change.)
- (b) For prescription medications, caregivers [Caregivers] must:
  - (1) (No change.)
  - (2) Store all medication in the original container unless the caregiver has ~~[you have]~~ an additional container with the same label and instructions;
  - (3) - (5) (No change.)
  - (6) Ensure a person trained in and authorized to administer ~~[prescription]~~ medication administers the medication to a child in care unless the child is on a self-medication program;
  - (7) Maintain any documentation provided by the health-care professional on the administration of current ~~[prescription]~~ medication;
  - (8) Not physically force a child to take ~~[prescription]~~ medication;
  - (9) Ensure that a child is not given any ~~[prescription]~~ medication or treatment except on written orders of a health-care professional;
  - (10) Not borrow or administer ~~[prescription]~~ medication to a child that is prescribed to another person; and
  - (11) Not administer ~~[prescription]~~ medication to more than one child from the same container. Only the child for whom the ~~[prescription]~~ medication was prescribed may use the medication.

§749.1469. *What are the requirements for administering nonprescription medication and supplements ~~[vitamins]~~?*

- (a) For non-prescription medications and supplements, you [You] must:
  - (1) Follow [follow] the label instructions for dosage;
  - (2) Inform the child's physician of the administration and dosage of any non-prescription medication or supplements to [and] ensure the nonprescription medication and/or supplements are [is] not contraindicated with any other medication prescribed to the child or the child's medical conditions.
  - (b) You may give nonprescription medication or supplements [vitamins] to more than one child from one container.

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

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### DIVISION 3. SELF-ADMINISTRATION OF MEDICATION

### 40 TAC §749.1503

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.1503. *Who must record ~~the~~ [a] medication dosage if the child is on a self-medication program?*

When a child who is on a self-medication program takes a dosage of the medication, you must ensure there is a system for reviewing the child's medication each day and that the child either [may]:

- (1) Records [Record] the daily dosage [if you have a system for reviewing the child's medication each day]; or
- (2) Reports [Report] the medication to a caregiver, who must then do the actual daily recording.

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

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### DIVISION 4. MEDICATION STORAGE AND DESTRUCTION

### 40 TAC §749.1521

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.1521. *What medication storage and destruction requirements must a foster home meet?*

A foster home must:

- (1) - (2) (No change.)

{(3) Ensure the medication storage area has a separate container where medications "for external use only" are stored separately from other medications;}

(3) [(4)] Store medication covered by Schedule II of the Texas Controlled Substances Act under double lock in a separate container. For example, a double lock can include a lock on the cabinet or filing cabinet and the door to the closet where medications are stored;

(4) [(5)] Make provisions for storing medication that requires refrigeration;

(5) [(6)] Keep medication storage area(s) clean and orderly;

(6) [(7)] Remove discontinued medication immediately and store it in a separate locked area until it is destroyed within 30 days;

(7) [(8)] Remove medication on or before the expiration date and store it in a separate locked area until it is destroyed within 30 days;

(8) [(9)] Remove medication of a discharged or deceased child immediately and store it in a separate locked area until it is destroyed within 30 days; and

(9) [(10)] Provide prescription medication to the person to whom a child is discharged or transferred if the child is taking the medication at that time.

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#### 40 TAC §749.1523

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

§749.1523. *What are the requirements for discontinued or expired medication?*

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

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#### DIVISION 5. MEDICATION RECORDS

##### 40 TAC §749.1541

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.1541. *What records must caregivers maintain for each child receiving medication?*

(a) Caregivers must maintain a cumulative medication record of all:

(1) (No change.)

(2) Nonprescription medications and supplements that are [~~medication, excluding vitamins,~~] dispensed to a child under five years old.

(b) The cumulative medication record must be updated within 24 hours of administering medication.

(c) [(b)] Caregivers must maintain the medication record, which [during the time that they provide services to the child. This record] must include [the]:

(1) Child's full name;

(2) Prescribing health-care professional's name, if applicable;

(3) Reason medication was prescribed, for prescription medication;

(4) Medication name, strength, and dosage;

(5) Date (day, month, and year) and the time the medication was administered;

(6) Name and signature of the person who administered the medication;

(7) Child's refusal to accept medication, if applicable; and

(8) Reasons for administering the medication, including the specific symptoms, condition, and/or injuries of the child that the caregiver is treating, only for:

(A) PRN psychotropic medication; and

(B) Nonprescription medications and supplements [(excluding vitamins)] for children under five years old.

(d) You must document in the medication record any non-prescription medication or supplement that is given to the child and how often the child receives the medication or supplement.

(e) [(e)] Caregivers must document [Identification of] any prohibited prescription medications (for example, medication allergies or contraindications) or prohibited [medication,] nonprescription medications and supplements [medication, and vitamins for each child must be maintained] in the medication record[, which must be incorporated into the child's record].

(f) [(f)] You must incorporate the [The] medication record [records of prescription and nonprescription medication dispensed to the child must be incorporated] into the child's record.

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## DIVISION 7. SIDE EFFECTS AND ADVERSE REACTIONS TO MEDICATION

### 40 TAC §749.1581, §749.1583

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1581. *What must a caregiver [caregivers] do if a child has an adverse reaction to a medication?*

If a child has an adverse reaction (unexpected or dangerous reaction) to a medication, the caregiver must:

(1) Immediately report the reaction to a health-care professional and the child's parent;

(2) - (4) (No change.)

§749.1583. *What must a caregiver do if a child experiences side effects from any medications?*

(a) A side effect from any medication is an effect of medication in addition to the medication's intended effect, often an undesirable effect.

(b) If a child experiences side effects from any medication, the caregiver must:

(1) Document the observed and reported side effects;

(2) Immediately report any serious side effects to the child's physician and the child's parent; and

(3) Report any other side effect to the prescribing physician within 72 hours.

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## SUBCHAPTER K. FOSTER CARE SERVICES: DAILY CARE, PROBLEM MANAGEMENT DIVISION 1. ADDITIONAL REQUIREMENTS FOR INFANT CARE

### 40 TAC §§749.1803, 749.1813, 749.1815, 749.1819

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1803. *What are the basic care requirements for an infant?*

(a) - (c) (No change.)

(d) Items necessary for diaper changing must be kept out of the reach of children, but do not need to be in locked storage.

(e) [(e)] An infant's caregiver must never leave the infant unsupervised:

(1) A sleeping infant is considered supervised if the caregiver is within eyesight or hearing range of the infant and can intervene as needed, or if the caregiver uses a video camera or audio monitoring device to monitor the infant and is close enough to the infant to intervene as needed; and

(2) An awake infant is considered supervised if the caregiver is within eyesight of the infant and is close enough to the infant to intervene as needed. For short periods of time in the course of routine household activities, the infant may be out of the caregiver's eyesight, as long as the:

(A) Infant is within hearing range;

(B) Infant's environment is free of any safety hazards;

and

(C) Caregiver is able to intervene immediately, as

needed.

§749.1813. *What types of equipment may a foster home not use with infants?*

(a) A foster home may not use any of the following types of equipment with infants:

(1) - (2) (No change.)

(3) Accordion safety gates; ~~and~~

(4) Toys that are not large ~~[small]~~ enough to prevent swallowing or choking; ~~[swallow or choke a child.]~~

(5) ~~[(b)]~~ Bean ~~[Children may not sleep on bean]~~ bags, waterbeds, and ~~[or]~~ foam pads for use as sleeping equipment; and~~[-]~~

(6) ~~[(e)]~~ Soft or loose bedding, such as blankets, sleep positioning devices, stuffed toys, quilts, pillows, bumper pads (including mesh bumpers), and comforters, ~~[may not be used]~~ in a crib for an infant younger than 12 months of age.

(b) ~~[(d)]~~ An infant receiving treatment services for primary medical needs may have special items that assist ~~[him]~~ with safe sleep at the written recommendation of a health-care professional. You must keep the recommendation in the child's record.

*§749.1815. What are the specific sleeping requirements for infants?*

(a) Caregivers must place an infant not yet able to turn over on his own in a face-up sleeping position unless a health-care professional orders otherwise. You must keep any orders from a health-care professional in the child's record.

(b) An infant's ~~[infant must not have his]~~ head, face, or crib must not be covered at any time by an item such as a blanket, linen, or clothing.

(c) (No change.)

*§749.1819. What are the specific requirements for feeding an infant?*

(a) (No change.)

(b) Unless recommendations from the service team are contrary, caregivers must hold the infant while feeding ~~[him]~~ if the infant is:

(1) - (2) (No change.)

(c) - (d) (No change.)

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### DIVISION 3. ADDITIONAL REQUIREMENTS FOR PREGNANT CHILDREN

#### 40 TAC §749.1863

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

*§749.1863. Is the use of emergency behavior intervention of a pregnant child permitted in a foster home?*

If your policies allow for the use of personal restraints and you have ~~[or]~~ a pregnant child in care:

(1) - (2) (No change.)

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### DIVISION 4. EDUCATIONAL SERVICES

#### 40 TAC §§749.1891, 749.1893, 749.1895

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

*§749.1891. What responsibilities do I have for the education of a child in care?*

(a) You must arrange an appropriate education for each child, including:

(1) Ensuring the child in care attends an educational facility or program that is approved or accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or the Texas Private School Accreditation Commission, unless ~~[approved by]~~ the child's service planning team approves the child attending another educational facility or program with documented justification. You must keep documentation of the planning team's justification and approval in the child's record;

(2) Ensuring a school-age child receives ~~[has the training and]~~ education and training in the least restrictive setting necessary to meet the child's needs and abilities;

(3) - (4) (No change.)

(b) (No change.)

*§749.1893. What responsibilities do caregivers have for the educational needs of a child in their care?*

Caregivers must:

(1) - (2) (No change.)

(3) Permit, encourage, and make reasonable efforts to involve the child in extracurricular activities as determined by a reasonable and prudent parent standard to the extent of the child's interests and abilities and in accordance with the child's service plan.

(4) - (5) (No change.)

(6) Request ARD (admission, review, and dismissal), IEP (individual education plan), and ITP (individual transitional planning) meetings if concerned with the child's educational program or if the child does not appear to be making progress; [and]

(7) Provide notice to the parent of the child of any scheduled ARD, IEP, or ITP meetings; and

(8) [(7)] Attend ARD, IEP, ITP meetings, other school staffings, and conferences to represent the child's educational best interests, including the child being evaluated for and provided with services needed for the child to benefit from educational services, and positive behavior supports designed to decrease the need for negative disciplinary techniques or interventions.

§749.1895. What are the specific requirements for the educational program of a child diagnosed with autism spectrum [a pervasive development] disorder?

You must ensure that the educational program for a child with an autism spectrum [a pervasive development] disorder:

(1) (No change.)

(2) Is appropriate to the child's [his] intellectual and social functioning.

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## DIVISION 5. RECREATIONAL SERVICES

### 40 TAC §§749.1921, 749.1923, 749.1925

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1921. What responsibilities do foster parents have for providing a child with opportunities for recreational activities?

(a) - (c) (No change.)

(d) Caregivers must provide the following types of recreational activities based on each individual child's needs: Figure: 40 TAC §749.1921(d)

§749.1923. What physical fitness activities must caregivers provide for a child receiving treatment services for primary medical needs or intellectual disability [mental retardation]?

(a) A child receiving treatment services for primary medical needs or intellectual disability [mental retardation] must have a minimum of one hour of physical stimulation each day.

(b) (No change.)

§749.1925. What type of daily schedule must caregivers provide for a child receiving treatment services for primary medical needs or intellectual disability [mental retardation]?

A child receiving treatment services for primary medical needs or intellectual disability [mental retardation] must have a schedule that is based on the normalization principle. In order to help the child obtain an existence as normal as possible, the daily schedule must:

(1) - (2) (No change.)

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## DIVISION 6. DISCIPLINE AND PUNISHMENT

### 40 TAC §§749.1957, 749.1959, 749.1961

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.1957. What other methods of punishment are prohibited?

In addition to corporal punishment, prohibited discipline techniques include, but are not limited to:

(1) - (7) (No change.)

(8) Humiliating, shaming, ridiculing, rejecting, screaming, or yelling at a child;

(9) - (15) (No change.)

§749.1959. To what extent may a caregiver restrict a child's activities as a behavior management tool?

(a) (No change.)

(b) Restrictions of activities, other than school or chores, which will be imposed on a child for more than 14 [30] days, must be reviewed with and approved by the child placement management staff or treatment director prior to or within 24 hours of imposing the restriction.

(c) - (e) (No change.)

§749.1961. *May a person in care discipline or punish another person in care?*

No. A person in care must not discipline or punish another person in care except when babysitting under §749.2599 of this title (relating to Can a child serve as a babysitter [caregiver]?).

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## SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION DIVISION 1. DEFINITIONS

### 40 TAC §749.2001

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2001. *What do certain terms [words] mean in this subchapter?*

These terms [words] have the following meaning in this subchapter:

[(1) **Chemical restraint**--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of medications that have a secondary effect of immobilizing or sedating a child, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons; is not chemical restraint and is not regulated as such under this chapter.]

[(2) **De-escalation**--See §749.43(15) of this title (relating to What do certain words and terms mean in this chapter?)]

[(3) **Emergency behavior intervention**--See §749.43(19) of this title.]

[(4) **Emergency medication**--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of medications that have a secondary effect of modifying a child's behavior, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons (e.g. benadryl for an allergic reaction or medication to control seizures); is not emergency medication and is not regulated as such under this chapter.]

[(5) **Emergency situation**--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury and it is immediately necessary to intervene to prevent:]

[(A) **Imminent probable death or substantial bodily harm to the child** because the child attempts or continually threatens to commit suicide or substantial bodily harm; or]

[(B) **Imminent physical harm to another** because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.]

[(6) **Mechanical restraint**--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.]

[(7) **Personal restraint**--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.]

[(8) **PRN**--See §749.43(49) of this title.]

[(9) **Prone restraint**--Placing a child in a chest down restraint hold.]

[(10) **Seclusion**--A type of emergency behavior intervention that involves the involuntary separation of a child from other residents and the placement of the child alone in an area from which the resident is prevented from leaving by a physical barrier, force, or threat of force.]

[(11) **Short personal restraint**--A personal restraint that does not last longer than one minute before the child is released.]

[(12) **Supine restraint**--Placing a child in a chest up restraint hold.]

[(13) **Transitional hold**--The use of a temporary restraint technique that lasts no longer than one minute as part of the continuation of a longer personal or mechanical restraint.

[(14) **Triggered review**--A review of a specific child's placement, treatment plan, and orders or recommendations for intervention, because a certain number of interventions have been made within a specified period of time.

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## DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

### 40 TAC §749.2151

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2151. *What responsibilities does a caregiver have when implementing a type of emergency behavior intervention?*

(a) - (e) (No change.)

(f) If the child does not appear to understand what the child [he] must do to be released from the emergency behavior intervention, the caregiver must attempt to re-explain it every 15 minutes until the child understands or is released from the intervention.

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## DIVISION 5. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A PERSONAL RESTRAINT

### 40 TAC §749.2201, §749.2203

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.2201. *Who must monitor a personal restraint?*

During any personal restraint, a caregiver qualified in emergency behavior intervention must:

(1) Monitor [~~monitor~~] the:

(A) Personal restraint to make sure it is being performed appropriately; and

(B) Child's [~~child's~~] breathing and other signs of physical distress; and

(2) Take [~~take~~] appropriate action to ensure adequate respiration, circulation, and overall well-being.

§749.2203. *What is the appropriate action for a caregiver to take to ensure the child's adequate respiration, circulation, and overall well-being?*

Appropriate action includes responding prudently to a potentially life-threatening situation, for example, releasing a child when a child is unresponsive or indicates the child [he] cannot breathe and immediately seeking medical assistance from a health-care professional. The caregiver must take into account that a child may thrash about more violently as the child [he] struggles to breathe.

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## DIVISION 6. COMBINATIONS OF EMERGENCY BEHAVIOR INTERVENTION

### 40 TAC §749.2231

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2231. *May a caregiver successively use emergency behavior interventions on a child?*

(a) - (b) (No change.)

(c) A caregiver must allow the child:

(1) Bathroom privileges as needed and at least once every two hours;

(2) - (5) (No change.)

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## DIVISION 8. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

### 40 TAC §749.2305

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

*§749.2305. When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?*

(a) As soon as possible, but no later than 24 hours after the initiation of the intervention, the caregiver must document in the child's record the following information:

(1) - (8) (No change.)

(9) The names of any witnesses to the emergency behavior intervention, including child witnesses in the home;

(10) [~~9~~] All attempts to explain to the child what behaviors were necessary for release from the intervention;

(11) [~~10~~] The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention. If the child received medical assistance or treatment, the caregiver must document the name of the medical provider; and

(12) [~~11~~] The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention.

(b) - (e) (No change.)

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## SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS

### DIVISION 1. GENERAL REQUIREMENTS

#### 40 TAC §749.2403

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

*§749.2403. What minimum age requirement must foster parents and caregivers meet?*

Each caregiver in a home that you verify [~~on or after January 1, 2007,~~] must be at least 21 years old. [~~Each caregiver in a home that you verified prior to that date must be at least 18 years old.~~]

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## DIVISION 2. FOSTER HOME SCREENINGS

#### 40 TAC §§749.2445, 749.2447, 749.2451, 749.2453

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.2445. *What is a foster home screening?*

(a) - (c) (No change.)

(d) Regarding §749.2447(7) of this title, you [You] must report to Licensing only the [all] information obtained about [under §749.2447(7) of this title regarding] the prospective foster family's domestic violence history, as applicable. You must report this information regardless of whether you verify the home.

§749.2447. *What information must I obtain for the foster home screening?*

You must obtain, document, and assess the following information about a prospective foster home:

Figure: 40 TAC §749.2447

§749.2451. *What must I document regarding interviews I conduct for a foster home screening?*

(a) You must document all interviews of [and attempts to interview] persons you are required to interview for a foster home screening.

(b) - (c) (No change.)

§749.2453. *When must I update the foster home screening?*

(a) You must update a foster home screening, as follows:

(1) Under the circumstances described in §749.307(a) of this title (relating to What happens to the foster homes supervised by a branch office when the branch office closes?); [and]

(2) When there is a major life change in the foster family as described in §749.2805 of this title (relating to What is a "major life change in the foster family?"); and[-]

(3) When there is a change that affects a foster home's verification as described in §749.2803 of this title (relating to What changes affect a foster home's verification?).

(b) (No change.)

(c) You [A CPA] must complete a foster home screening update that is needed under the circumstances described in §749.307(a) of this title before issuing a new verification certificate.

(d) You [A CPA] must do the following when updating a foster home screening because of a major life change in the foster family:

(1) - (2) (No change.)

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### DIVISION 3. VERIFICATION OF FOSTER HOMES

### 40 TAC §§749.2471, 749.2475, 749.2487, 749.2488, 749.2497

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.2471. *What must I do to verify a foster home?*

Verifying a foster home includes the following steps:

(1) - (4) (No change.)

~~[(5) If the home will provide treatment services, ensuring that the home complies with the policies developed according to §749.349 of this title (relating to What additional policies must I develop for foster parents that provide treatment services?);]~~

(5) ~~[(6)]~~ If the home will provide a transitional living program, ensuring the home complies with the policies developed according to §749.125 [~~§749.351~~] of this title (relating to What policies must I develop for foster parents who offer a transitional living program?);

(6) ~~[(7)]~~ Evaluating all areas required in this subchapter, and making recommendations regarding the home's ability to care for and work with children with respect to a child's gender and age, the number of children, and the types of services to be provided;

(7) ~~[(8)]~~ If there are any indicators of potential risk to children based on the assessment and evaluation of an area required in this subchapter, documenting the indicators and how you addressed them with the prospective foster family prior to approval and verification of the home;

(8) ~~[(9)]~~ Obtaining from the child placement management staff review and approval of the home screening, and the recommended verification of the home; and

(9) ~~[(10)]~~ Issuing a verification certificate that specifies the:

(A) Name of the foster home;

(B) Foster home address and/or location;

(C) Foster home's total capacity, which includes the biological and adopted children of the caregivers who live in the foster home, any children receiving foster or respite child-care, and children for whom the family provides day care;

(D) Foster home's foster care capacity, a subset of the total capacity which includes only children placed for foster care or respite child care;

(E) Ages and gender(s) of children for which the home is verified to provide foster care or respite child care;

(F) Types of services the foster home will provide;

(G) Agency's main office or branch office which issued the verification; and

(H) Expiration date of a time-limited verification, if applicable.

§749.2475. *To whom must I release information regarding a family on which I previously conducted a foster home screening, pre-adoptive home screening, or post placement adoptive report[; or home study]?*

(a) - (b) (No change.)

(c) For the purposes of this section, background information includes:

(1) - (5) (No change.)

(6) Copies of any current or previous plan to achieve compliance or other type of [annual] development plan [plans] for the past two years, if applicable; and

(7) Copies of any current or previous correction action or adverse action plans for the past two years, if applicable.

(d) (No change.)

§749.2487. *What are the requirements for an agreement that I have with a foster home that I verify?*

(a) You must sign a written agreement with each agency foster home at the time that you verify the home. You and the foster home must each have copies of the signed agreement. You must file a copy of the signed agreement in the agency home record.

(b) (No change.)

§749.2488. *What statement must I provide to foster parents regarding foster parent and child-placing agency rights and responsibilities?*

(a) - (d) (No change.)

(e) At the time you verify the home, you must also provide foster parents with a written copy of your policies relating to §749.121 of this title (relating to What policies must I develop concerning the rights and responsibilities of the child-placing agency and the foster parents?).

§749.2497. *Are transfer/closing summaries required for foster homes?*

Yes, you must have either a transfer summary or closing summary for each foster home that transfers to another child-placing agency [CPA] or closes.

(1) - (2) (No change.)

(3) A transfer and closing summary must include:

(A) - (B) (No change.)

(C) The length of time the foster parents have been fostering with you [the CPA];

(D) (No change.)

(E) A description of any limitations on verification that were in place for the foster home in caring for and working with children (such as gender, age, number of children, treatment services, special needs, or type of abuse or neglect experienced by the child), regardless of whether the limitation was requested by the foster parent or imposed by you [the CPA];

(F) (No change.)

(G) For a transfer summary, [~~whether there are~~] any pending investigations and/or unresolved deficiencies;

(H) For a closing summary, [~~whether there were~~] any unresolved deficiencies that had not been corrected and what those deficiencies were;

(I) Any [Whether there are any] indicators of risk to children at the time of transfer/closing and what those indicators are;

(J) Any plan to achieve compliance or other type of [Whether there was an annual] development plan that was in place within the previous 12 months [at the time] of the date of transfer/closing; [and]

(K) Any [Whether there was a] corrective action or adverse action plan that was in place at the time of transfer/closing; and[-]

(L) A statement concerning whether you would recommend the foster home for verification in the future, including whether you would recommend any limitations or restrictions on the verification, and the basis of your recommendation or lack thereof.

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## DIVISION 6. SUPERVISION

### 40 TAC §749.2599

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2599. *Can a child serve as a babysitter [caregiver]?*

A child who is 16 years old or older, including a foster child, may serve as a babysitter for children under the age of 13 as long as:

(1) The child placement management staff approves the child to babysit and establishes[; establishing] limits with duration and frequency;

(2) (No change.)

(3) The child is certified in first aid and cardiopulmonary resuscitation (CPR) [CPR]; and

(4) (No change.)

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## DIVISION 8. RESPITE CHILD-CARE SERVICES

### 40 TAC §749.2623, §749.2635

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

*§749.2623. What must occur before I place a child for respite child-care services?*

Before placing the child in respite child-care services, you [You] must:

(1) Notify [notify] the child's parent; and [before placing the child in respite child-care services.]

(2) Inform the child of the plan for respite child-care services, including the intended time of stay.

*§749.2635. May I place a child for babysitting, overnight care, or respite care services in a home that Licensing does not regulate?*

Yes, you may place a child in a home that Licensing does not regulate for babysitting, overnight care, or respite care, if the provider:

(1) (No change.)

(2) Meets the policy requirements your agency developed according to §749.127 [§749.353] of this title (relating to What policies must I develop for babysitters, overnight care providers, and respite care providers?).

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## DIVISION 9. AGENCY--FOSTER FAMILY RELATIONSHIPS

### 40 TAC §749.2655

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

*§749.2655. When must a foster home notify you of changes that affect the foster home?*

A foster home must notify you of any of the following changes as follows:

Figure: 40 TAC §749.2655

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## SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION

### 40 TAC §§749.2803, 749.2805, 749.2815

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

*§749.2803. What changes affect [the conditions of] a foster home's verification?*

(a) Changes that affect [the conditions of] a foster home's verification include a [change in the]:

(1) Marriage, divorce, separation, death, birth, or any other change in household composition [Name of the foster home];

(2) Change in the foster [Foster] home's address and/or location;

(3) Change in the foster [Foster] home's capacity, as determined by the capacity requirements in §749.2557 of this title (relating to May a foster agency home exceed its verified capacity?);

(4) Changes in the ages [Ages] and gender(s) of children for which the home is authorized to provide care; or

(5) Changes in the [The] types of services the foster home will provide.[:; or]

~~[(6) The composition of the family or home.]~~

~~[(b) A verification certificate is only valid until:]~~

~~[(4) The occurrence of any changes that affect the conditions of a foster home's verification, including the home's address and/or location; or]~~

~~[(2) The foster home's limited verification expires.]~~

(b) [(e)] You must issue a new or temporary verification certificate to a foster home [prior] to:

(1) Change [Changing any conditions of] the home's verification, including the home's address or location;

(2) Extend [Extending] the expiration date of the home's time-limited verification; or

(3) Change [Changing] a foster home's verification from time-limited to non-expiring.

(c) A verification certificate becomes invalid at the point of:

(1) The occurrence of any changes that affect a foster home's verification, including the home's address and/or location; or

(2) The foster home's limited verification expires.

*§749.2805. What is a "major life change in the foster family"?*

A major life change in the foster family includes:

(1) (No change.)

(2) A serious health problem or significant change in work schedule that affects the ability of the foster parent to care for children; or

(3) (No change.)

*§749.2815. How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?*

(a) Child placement staff [You] must conduct [have] supervisory visits:

(1) - (3) (No change.)

(b) (No change.)

(c) At least once every quarter, your supervisory visit must evaluate and document the following:

(1) - (3) (No change.)

(4) Any challenging behaviors of the current children in the home, the level of stress the foster family is currently experiencing (including any significant change in finances), and any methods for responding to each child's challenging behavior and/or alleviating any significant stress the foster family is experiencing.

(d) You must document each visit in the home's record. The documentation must include the names of all household members present during the visit, specific issues identified and any rules evaluated, results of the evaluation, deficiencies found, plans for achieving compliance, plans for follow-up to ensure compliance was achieved, and any changes to the information in the foster home screening since the last supervisory visit, including the reasons for any change in the home's verification.

(e) (No change.)

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## SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT DIVISION 1. HEALTH AND SAFETY

### 40 TAC §749.2902

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.042.

*§749.2902. What health safety measures are required at a foster home?*

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### 40 TAC §§749.2902 - 749.2905, 749.2909, 749.2911, 749.2913, 749.2917

The new section and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC §40.042.

§749.2902. *What health and safety measures are required at a foster home?*

(a) Foster homes must have either:

(1) A health inspection conducted from the local health authority; or

(2) A health and safety evaluation conducted by your child placement staff using our Environmental Health Checklist form for foster homes.

(b) You must document each health inspection or health and safety evaluation, including the name and telephone number of the person who conducted the inspection or evaluation.

(c) The foster home must correct any deficiencies documented during any inspection or evaluation and must comply with any conditions or restrictions specified by the inspector or evaluator.

§749.2903. *What fire safety measures are required at a foster family home not serving children receiving treatment services for primary medical needs?*

(a) Foster family homes not serving children receiving treatment services for primary medical needs must have either:

(1) A fire inspection conducted by a [certified fire inspector or a local or] state or local fire authority; or

(2) (No change.)

(b) (No change.)

(c) The foster home must correct any deficiencies [Deficiencies] documented during any inspection or evaluation and [must be corrected, and the foster home] must comply with any conditions or restrictions specified by the inspector or evaluator.

(d) If a foster family home changes verification to become either a foster family home serving children receiving treatment services for primary medical needs or a foster group home, then the foster home must meet the fire safety measures for §749.2904 of this title (relating to What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs or a foster group home?) before changing the verification.

§749.2904. *What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs or a foster group home?*

(a) Foster family homes serving children receiving treatment services for primary medical needs and foster group homes must have a fire inspection conducted by a [certified fire inspector or a local or] state or local fire authority. You must document efforts to obtain a fire inspection. If, after exploring and documenting efforts to obtain a fire inspection for a home, you cannot obtain a fire inspection, then a fire safety evaluation may be conducted by your child-placement staff using the State Fire Marshal's fire prevention checklist for foster homes. Documentation of efforts to obtain a fire inspection must include each date, the name of the person contacted, and the person's response to the request to complete an inspection.

(b) - (c) (No change.)

§749.2905. *How often must fire and health inspections be conducted at a foster home?*

(a) Unless otherwise stated in the report, a fire or health inspection report obtained from a local health authority or state or local fire authority[, including a certified fire inspector], is current for:

(1) - (2) (No change.)

(b) A fire safety or health and safety evaluation by [If you] use of a checklist [for a foster home's fire or health inspection, the checklist] is current for one year.

§749.2909. *How many smoke detectors must a foster home have?*

(a) (No change.)

(b) Depending on the size and layout of the home, additional smoke detectors may be required based on the manufacturer's or the state or local fire authority's [inspector's] instructions.

§749.2911. *How must smoke detectors be installed and maintained at a foster home?*

Smoke detectors must be installed and maintained according to the manufacturer's instructions, or in compliance with the state or local fire authority's [inspector's] instructions.

§749.2913. *How many fire extinguishers must a foster home have?*

(a) (No change.)

(b) The fire extinguisher(s) must [be]:

(1) Be serviced [Serviced] or replaced after each use; and

(2) Have a maintenance check once a year by a person qualified to inspect fire extinguishers [Checked for proper weight at least once a year].

§749.2917. *What are the requirements for animals that are present at a foster home?*

(a) Any animals on the premises of a home must be kept free of disease and must not create health problems or a health risk for children.

(b) Animals must be vaccinated and treated as recommended by a licensed veterinarian.

(c) The caregivers must have documentation at the home showing that dogs[, and cats[, and ferrets] have been vaccinated for rabies as required by Texas Health and Safety Code, Chapter 826. [If the foster home chooses to have animals on the premises, it must ensure that the animals do not create health problems or a health risk for children.]

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## DIVISION 2. TOBACCO AND E-CIGARETTE USE

### 40 TAC §749.2931

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2931. *What policies must I enforce regarding tobacco products and e-cigarettes?*

(a) A child may not use or possess tobacco products, e-cigarettes, or any type of vaporizers.

(b) Caregivers and other adults may only smoke tobacco products, e-cigarettes, and vaporizers outside.

(c) No one may smoke tobacco products, e-cigarettes, or vaporizers in a motor vehicle while transporting children in care.

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

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### DIVISION 3. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

#### 40 TAC §749.2961

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.2961. *Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?*

(a) Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows), are permitted, however, there are some specific restrictions:

(1) - (2) (No change.)

(3) No child may use a weapon, firearm, explosive material, projectile, or toy that explodes or shoots, unless the child is directly supervised by an [a qualified] adult knowledgeable about the use of the weapon, firearm, explosive material, projectile, or toy that explodes or shoots that is to be used by the child.

(b) - (c) (No change.)

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

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### DIVISION 4. SPACE AND EQUIPMENT

#### 40 TAC §§749.3027, 749.3031, 749.3039

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.3027. *May a child in care share a bedroom with an adult caregiver?*

(a) A child may share a bedroom with an adult caregiver if:

(1) It is in [H] the best interest of the child;

(2) - (3) (No change.)

(b) - (c) (No change.)

(d) To facilitate continuous supervision of a child, the caregiver may move a child to a location where the caregiver can directly and continuously supervise a child until there is no longer an immediate danger to self [himself] or others. However, the caregiver must provide comfortable sleeping arrangements for the child.

§749.3031. *What are the requirements for beds and bedding?*

(a) Each foster child shall have their [his] own bed and mattress. This does not prevent a child receiving respite care or requiring closer supervision from sleeping on a couch, sleeping bag, etc. for fewer than seven days.

(b) (No change.)

(c) Mattresses must be off of the floor and have covers or protectors.

(d) (No change.)

§749.3039. *What are the requirements for outdoor recreation [spæe and] equipment?*

(a) - (d) (No change.)

(e) Trampolines may only be used at the foster home if:

(1) The number of children allowed on the trampoline at one time meets the manufacturer's instructions [Only one child is on the trampoline at a time];

~~[(2) Somersaults are not allowed on the trampoline;]~~

~~(2) [(3)] Shock-absorbing pads cover the springs, hooks, and frame;~~

~~(3) Ladders are removed from the trampoline when the trampoline is not in use; and~~

~~[(4) No ladder is used with the trampoline; and]~~

~~(4) [(5)] A caregiver provides supervision as follows:~~

(A) For children under 12 ~~[15]~~ years old, the caregiver must be immediately present, watching the child(ren) at all times, enforcing safety rules and manufacturer's instructions, and able to respond in an emergency; and

(B) For children 12 ~~[15]~~ years old and older, the caregiver must be on the premises, visually check on the child(ren) at frequent intervals, and able to respond in an emergency.

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

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## DIVISION 5. NUTRITION AND FOOD PREPARATION

### 40 TAC §749.3061, §749.3075

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.042.

§749.3061. *What are the requirements for feeding children in care?*

~~[(a) Caregivers must give children food of adequate quality and in sufficient quantity to supply the nutrients necessary for proper growth and development.]~~

(a) ~~[(b)]~~ Caregivers must feed an infant whenever the infant is hungry.

(b) ~~[(e)]~~ Caregivers must provide a toddler or school age child with three meals and at least one snack a day.

(c) ~~[(d)]~~ No more than 14 hours may pass between the last meal or snack of the day and the availability of the first meal the following day.

§749.3075. *What are the feeding requirements [food service practices must caregivers use] for children receiving treatment services*

*for primary medical needs or intellectual disabilities [mental retardation]?*

(a) Caregivers must encourage self-help and development when feeding ~~[Food service practices for]~~ children receiving treatment services for primary medical needs or intellectual disabilities ~~[mental retardation]~~, including non-mobile children~~]; must encourage self-help and development].~~

(b) - (c) (No change.)

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

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## DIVISION 6. TRANSPORTATION

### 40 TAC §749.3103

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.3103. *What are the requirements for transporting foster children?*

The driver and all passengers must follow all federal, state, and local laws when driving, including laws on the use of a child passenger safety seat system ~~[systems]~~, seat belts, and liability insurance.

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

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## DIVISION 7. SWIMMING POOLS, BODIES OF WATER, SAFETY

### 40 TAC §§749.3133, 749.3135, 749.3137, 749.3139, 749.3151

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.042.

§749.3133. *What are the requirements for a pool at a foster home?*

(a) The caregivers must inform children about house rules for use of the pool and appropriate safety precautions. Adult supervision and monitoring of safety features must be adequate to protect children younger than 12 years of age and children of any age who are not competent swimmers from unsupervised access to the pool.

(b) (No change.)

(c) A fence or wall that is at least four feet high must enclose the pool area. The fence must be well constructed and be installed completely around the pool area. [~~A foster home that you verified before January 1, 2007, has one year from that date to comply with this requirement. Caregivers must continue to prevent children's unsupervised access to the pool.~~]

(d) Fence gates leading to the outdoor pool area must be self-closing and self-latching. Gates must be locked when the pool is not in use. Keys to open the gate must not be accessible to children under the age of 12 [16] years old, children of any age who are not competent swimmers, or any children receiving treatment services.

(e) - (n) (No change.)

(o) An aboveground pool must:

(1) Be inaccessible to children under the age of 12 [16] years old, children of any age who are not competent swimmers, or any children receiving treatment services when it is not in use; and

(2) (No change.)

(p) (No change.)

§749.3135. *What general requirements must caregivers meet for children regarding a body of water?*

(a) Caregivers must use prudent judgment and ensure children in your care who are younger than 12 years old, children of any age who are not competent swimmers, and children receiving treatment services are protected from unsupervised access to water such as a swimming pool, hot tub, fountain, pond, lake, creek, or other body of water.

(b) - (c) (No change.)

§749.3137. *What are the child/adult ratios for swimming activities?*

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:  
Figure: 40 TAC §749.3137(a)

(b) In addition to meeting the required swimming child/adult ratio listed in subsection (a) of this section, if four or more children are actually in the water [engaged in swimming activities], then there must be at least two adults supervising [to supervise] the children.

(c) (No change.)

(d) A lifeguard who is supervising the area where the children are swimming may be counted in the child/adult ratio; however, one caregiver must always be present and the lifeguard may not be the only person counted in the child/adult ratio.

(e) The ratios in subsection (a) of this section do not include children over the age of 12 years old who are competent [proficient] swimmers. However, you must still comply with the child/caregiver ratios required in §749.2563 of this title (relating to How do I determine child/caregiver ratio for a foster group home?); including compliance with subsection (e) of this section if children are on an unsupervised swimming activity].

§749.3139. *May I include volunteers or relatives who do not meet minimum qualifications for caregivers in the swimming child/adult ratio?*

To meet the swimming child/adult ratio, you may include adult volunteers and adult relatives who do not meet the minimum qualifications for caregivers, providing:

(1) (No change.)

(2) Persons in your care do not supervise swimming [water] activities; and

(3) (No change.)

§749.3151. *Can foster parents approve a child to participate in swimming activities as an unsupervised childhood activity without complying with the rules of this division?*

Yes, a foster parent using the "reasonable and prudent parent standard" as defined in §749.2605 of this title (relating to What is the "reasonable and prudent parent standard"?) may approve a child to participate in unsupervised childhood activities (activities away from the foster home and the foster parents) involving swimming that do not comply with the rules of this Division of this Subchapter (relating to Swimming Pools, Bodies of Water, Safety). However, depending upon the background of the child (for example the child's age, level of maturity and responsibility, and proficiency in swimming), such an approval may or may not require limitations like other adult supervision or the need for a life jacket when boating.

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

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## SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE TRAFFICKING VICTIM SERVICES

### DIVISION 4. TRAINING

#### 40 TAC §749.4153

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.4153. *Must I provide pre-service training to a caregiver or an employee who was previously a caregiver or employee for another operation?*

(a) A child-placing agency does not have to provide additional general pre-service training or pre-service training regarding emergency behavior intervention to any caregiver or employee who is exempt from this training by §749.867 of this title (relating to Must I provide pre-service training to a caregiver or employee who was previously a caregiver or employee for a residential child-care operation [child-placing agency?]). In addition, a caregiver or employee (child-placing agency administrator, treatment director, child placement management staff, child placement staff, or full-time professional service provider) does not have to complete the five hours of pre-service training regarding complex trauma experienced by trafficking victims if the caregiver or employee:

(1) - (2) (No change.)

(b) (No change.)

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

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## DIVISION 5. ADMISSION AND SERVICE PLANNING

### 40 TAC §749.4259

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.042.

§749.4259. *What mental health services are required for a child receiving trafficking victim services?*

(a) A specialized professional service provider must:

(1) Provide individual counseling [therapy] to each child receiving trafficking victim services; and

(2) Assess the frequency and duration of the counseling [therapy].

(b) (No change.)

(c) If a child refuses counseling [therapy], you must document this refusal in the child's record.

(d) (No change.)

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

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## CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.863, 749.931, 749.1311, 749.2563, and 749.2593; new §§749.868, 749.882, 749.943, 749.944, 749.2601, 749.2603, 749.2605, and 749.2607; and repeal of §749.2594, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies. The purpose of the amendments, new rules and repeal are to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy and for clarity and consistency. In December of 2014, some changes to Chapter 749 related to normalcy became effective; these changes need to be updated.

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that were organized by CASA (Court Appointed Special Advocates). On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

A summary of the changes related to normalcy include: (1) creating an independent Normalcy Division in Chapter 749 to clarify and highlight the issues and make the rules related to normalcy easier to find; (2) clarifying that children must participate in childhood activities, including unsupervised childhood activities (activities that are away from and not supervised by the foster home) as much as possible; (3) defining "normalcy" and the "reasonable and prudent parent standard"; (4) listing items that

must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; (5) clarifying who will make decisions regarding whether a child may participate in a childhood activity; (6) clarifying that a child's participation in childhood activities must be discussed during service planning meetings; (7) requiring two hours of pre-service training regarding normalcy for foster parents and certain employees of CPAs; (8) requiring that two hours of normalcy training be included in the mandated annual training for all caregivers; and (9) providing a list of curriculum components that must be included in the general pre-service and annual normalcy training.

A new definition for "childhood activities" and a modified definition for "unsupervised childhood activities" have been added to the definitions in §749.43 of this title (relating to What do certain words and terms mean in this chapter?). Since there will be many other changes to definitions in §749.43 in response to the comprehensive review of Chapter 749, the definition changes are being proposed in the comprehensive review packet of Chapter 749 and will be published in the same issue of the *Texas Register*. However, for purposes of understanding these proposed changes the proposed §749.43 definitions are as follows: (1) childhood activities--activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §749.2605 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities; and (2) unsupervised childhood activities--childhood activities that a child in care participates in away from the foster home and the foster parents. Childhood activities that the foster parents conduct or supervise or a child-placing agency sponsors are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

In addition, some minor changes related to normalcy are being made to the Chapter 749 rules relating to service planning and children's rights. Since there are other more significant changes being made to the service planning and children's rights rules, those rules are also being proposed in a different set of rules that will also make changes to Chapter 749 and be published in the same issue of the *Texas Register*.

Finally, there are some additional rule review changes not related to normalcy that are being proposed in these rules, which consists of updating the language and numbering of tables for consistency and ease of understanding.

A summary of the changes follows:

The amendment to §749.863: (1) requires two additional hours of pre-service training regarding normalcy for foster parents, Child-Placing Agency (CPA) administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services; (2) updates/changes the language of "mental retardation" to "intellectual disabilities", and "pervasive development disorder" to "autism spectrum disorder"; and (3) deletes subsection (b) because this language is unnecessary. There is no need to exempt caregivers ex-

clusively caring with primary medical needs from the training requirement because the provision contains no requirement for those caregivers. However, this language will be included in a Helpful Information box within the Minimum Standards.

New §749.868 provides an exemption to the requirement of two additional hours of pre-service training regarding normalcy for child-placing agency administrators, treatment directors, child placement staff, child placement management staff, or full-time professional service providers when the individuals have been trained on normalcy within the last 12 months.

New §749.882 lists the curriculum components that must be included in the pre-service training regarding normalcy.

The amendment to §749.931: (1) requires that the mandatory annual training for caregivers/foster parents, child placement staff, child placement management staff other than those exclusively doing adoptions, and executive director, treatment directors, and full-time professional service providers who do not hold a relevant professional license must include two hours of training specific to normalcy; (2) clarifies the language, combines some sections, and adds numbering to be more consistent throughout the rule and to make it easier to read; (3) updates/changes the language of "pervasive development disorder" to "autism spectrum disorder"; and (4) for ease of understanding deletes paragraph (8) by incorporating the language into other sections and adding §749.944.

New §749.943 requires: (1) annual training regarding normalcy to include the curriculum components that are required in §749.882; and (2) subsequent training to further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented.

New §749.944 lists the training components that must be included in the mandated annual training related to prevention, recognition, and reporting on child abuse and neglect. This rule is being added so paragraph (8) of the table at §749.931 can be deleted to simplify the table and for ease of understanding.

The amendment to §749.1311 clarifies that: (1) a child that is verbal and developmentally able to participate must be invited to participate in the development of the child's service plan; and (2) the service planning meeting must include discussions regarding the child's participation in childhood activities.

The amendment to §749.2563 clarifies the language of this rule and deletes an outdated cite.

The amendment to §749.2593: (1) clarifies that a caregiver must be aware of a child's special supervision needs; and provide, arrange, or confirm an appropriate method of transportation for an unsupervised childhood activity; and (2) moves and revamps the current subsection (d) and (e) to the new Division 7, Normalcy.

The language of the repeal of §749.2594 is being moved and revamped into new §749.2607.

New §749.2601 defines "normalcy."

New §749.2603 states that: (1) children must participate in childhood activities, including unsupervised childhood activities, as much as possible; and (2) service planning meetings must discuss normalcy for the child.

New §749.2605: (1) defines the "reasonable and prudent parent standard"; (2) lists the items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; and (3) provides a

presumption that a reasonable and prudent parent would include a child in care in foster family activities to the same extent as a child born to the foster family.

New §749.2607 states that: (1) the foster parents make the decisions regarding a child's participation in childhood activities; (2) when making this decision the foster parents must follow the reasonable and prudent parent standard; and (3) the service plan may not require prior approval of the parent before the designated person may consent to a child's participation in childhood activities.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for each of the first five years that the amendments, new sections, and repeal will be in effect, there will not be costs or revenues to state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the amendments, new sections, and repeal will be that the safety of children in care and the quality of their care will be improved by integrating normalcy into the minimum standards. There is an anticipated adverse impact on businesses, including small and micro-businesses, which must comply with the proposed rule changes. CPAs will be impacted. The DFPS 2014 Annual Report and Data Book states that there are 217 CPAs operating in Texas. Of those CPAs, there are 11 CPS regional divisions that operate as certified CPAs. The 11 CPS CPAs will not be discussed in this section of the fiscal impact analysis, because they do not meet the legal definition of a large, small or micro business. There is no anticipated economic cost to persons who are required to comply with the proposed rule changes, other than the persons who have a financial stake in a CPA.

Licensing has identified four proposed rules in Chapter 749 as potentially having an adverse fiscal impact on CPAs. The rules are discussed herein.

The size of the CPA and the number of foster and adopted homes that each CPA has varies significantly. A few CPAs have hundreds of foster and adoptive homes; other CPAs have 20 to 50 foster and adoptive homes, while others have even fewer foster and adoptive homes. Given this variation, it is not possible to project the fiscal impact to each CPA; however, it is possible to project an average "unit cost" for certain types of activities that are newly required by the amendments, new sections, and repeal.

The fiscal impact to CPAs primarily results from additional staff time needed to (1) attend new pre-service training regarding normalcy; and (2) update and develop curriculum.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail herein, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some CPAs.

For CPAs, the staff time required to comply with the standards will impact child placement staff, child placement management staff, full-time professional service providers, treatment directors, and the child-placing agency administrators. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of CPA staff, as follows (actual salaries paid to staff by

a CPA may be greater or less than the averages used for these projections):

(1) Child Placement Staff - The 2016 average salary for Foster and Adoptive Development (FAD) Workers (CPS Specialists I - V) was used to determine the salary costs for the child placement staff because the FAD Workers are the child placement staff for CPS. The Fiscal Year (FY) 2016 average salary for a FAD Worker is \$43,768 per year or \$21.04 per hour.

(2) Child Placement Management Staff, Full-Time Professional Service Providers, and Treatment Directors - The 2016 average salary for FAD Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the child placement management staff, full-time professional service providers, and treatment directors because the FAD Supervisor is the position that most often meets the minimum qualifications for and acts as the child placement management staff for CPS. It is assumed that the costs for full-time professional service providers and treatment directors would be similar to the child placement management staff. The FY 2016 average salary for a FAD Supervisor is \$52,071 per year or \$25.03 per hour.

(3) CPA Administrator - The 2016 average salary for CPS Regional Directors was used to determine the salary costs for the CPA administrator because the CPS Regional Directors act as the CPA administrator for each CPS region. The FY 2016 average salary for a CPS Regional Director is \$93,862 per year or \$45.13 per hour.

Fiscal Impact for Proposed §749.863: Revisions to §749.863 add pre-service training requirements regarding normalcy for two sets of populations: foster parents; and CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services. This fiscal impact statement is divided into two sections, which explain the fiscal impact for each population:

(1) The proposed addition to this rule requires two additional hours of pre-service training regarding normalcy for foster parents. There are 206 private CPAs and 120 of those CPAs contract with CPS to provide foster care services. For the CPAs that contract with CPS, CCL is assuming this new requirement will not result in any new costs. Most, if not all, of the CPAs that contract with CPS already require additional hours of pre-service training to verify a foster home. In addition, H.B. 781 that was passed by the 84th Texas Legislative (2015) session now requires all CPAs that contract with CPS to provide 35 hours of pre-service training to their foster parents. The additional two hours of pre-service training for normalcy can be incorporated into the 35 hours of pre-service training that is now required by H.B. 781 via Parent Resources for Information, Development and Education (PRIDE) training or some other similar training module. Of the remaining 86 CPAs, approximately 50 CPAs provide adoption only services. Generally, the adoption only CPAs do not verify foster homes or verify very few foster homes. The remaining 36 CPAs that provide foster care services are generally small CPAs that do not verify many foster homes. However, for these CPAs, there will be some training instruction costs for the foster parents. The average cost of group training offered by local resource and referral agencies is \$20 per hour. As such, the cost of instruction for pre-service training regarding normalcy would be \$40 per foster parent trained. Since foster parents are not paid employees, there are no hourly wage costs for foster parents to attend a training class. In some instances CPAs will pay for these training costs for the foster parents; in other in-

stances foster parents must incur their own costs for these trainings.

(2) The proposed addition to this rule requires two new hours of pre-service training regarding normalcy for CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services. The training must be completed before the person can be a designated person that makes decisions regarding a child's participation in childhood activities, or within 90 days of beginning job duties, whichever occurs earlier. There are two costs associated with the additional two hours of general pre-service training regarding normalcy for CPA employees: the hourly wages paid to the training participants while attending a class and the training instruction cost. The average cost of group training offered by local resource and referral agencies is \$20 per hour. Licensing assumed that training for these staff is 25% more expensive than training caregivers given that the level of expertise of trainers is usually higher. As such, the cost of instruction for pre-service training regarding normalcy would be \$25 per hour per employee trained. The training will only apply to new staff. But the cost to train these staff for two hours is estimated as follows: (1) Child Care Administrator - \$140.26 {(hourly wage of \$45.13 x 2 hours of training) + (\$25.00 x 2 hours of instruction costs)}; (2) Child Placement Management Staff, Full-Time Professional Service Providers, and Treatment Directors - \$100.06 {(hourly wage of \$25.03 x 2 hours of training) + (\$25.00 x 2 hours of instruction costs)}; and (3) Child Placement Staff - \$92.08 {(hourly wage of \$21.04 x 2 hours of training) + (\$25.00 x 2 hours of instruction costs)}.

Fiscal Impact for Proposed §749.882: This new rule specifies the curriculum components that must be included in the pre-service training regarding normalcy for foster parents, the child care administrator, profession level service providers, treatment director and case managers. The costs for sending these persons to training was discussed in "Fiscal Impact for Proposed §749.863" herein. However, if a CPA determines they want to provide this training in-house, then the instruction costs noted herein (\$40 per foster parent and \$50 per each employee for the two hours of training) would no longer be applicable, but the normalcy training curriculum would need to be developed. The training for normalcy must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. It is anticipated that a child placement management staff or some employee similarly situated will spend an average of 60 hours (30 hours x 2 training hours) to 100 hours (50 hours x 2 training hours) to develop the curriculum. Therefore, the one-time cost to update the curriculum regarding normalcy will be between approximately \$1,501.80 {\$25.03 (the hourly wage of a child placement management staff) x 60 hours} and \$2,503.00 {\$25.03 (the hourly wage of a child placement management staff) x 100 hours} per CPA.

Fiscal Impact for Proposed §749.931 and §749.943: Revisions to §749.931 require that the currently mandated annual training for caregivers and employees of CPAs must now include training regarding normalcy. Revisions to §749.943 list the curriculum components that must be included in the required annual normalcy training. There is no increase in the number of annual training hours required; there is only the requirement that training must include two hours of training regarding normalcy. Since there is only a change in the content of the training, there is no fiscal impact in the delivery of the training because the CPA already pays for or delivers the annual training for the same number of training hours. If the CPA is currently paying for outside annual

training, then there are no additional costs for the CPA. However, there is a small fiscal impact when a CPA actually delivers the training and must now modify the normalcy curriculum that was developed for the pre-service training, see "Fiscal Impact for Proposed §749.882" herein. It is anticipated that a child placement management staff or some employee similarly situated will spend 20 hours to modify the pre-service normalcy curriculum into an annual training. Therefore, the one-time cost to modify the curriculum regarding normalcy will be \$500.60 {\$25.03 (the hourly wage of a child placement management staff) x 20 hours} per CPA.

Regulatory Flexibility Analysis - The amendments, new sections and repeal apply to the approximately 206 private CPAs. Of those, only 20 potentially fall within the statutory definition of a small or micro-business, because only 20 of the CPAs are for-profit business. Of these 20 CPAs, it is estimated that almost all of them are small businesses, and probably half are micro-businesses.

The projected economic impact on small and micro-businesses was addressed for CPAs in the foregoing section of the preamble. As noted herein, with the widely varying number of children cared for by CPAs, the fiscal impact of these rules to particular CPAs will vary, with the total dollar impact likely to be greater for CPAs that serve a larger number of children and less for CPAs that serve a smaller number of children.

DFPS did not consider any alternatives to the amendments, new sections or repeal being proposed that require additional training for normalcy to ameliorate the impact on CPAs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes is to ensure the health and safety of children and to improve their quality of care - regardless of the size of the CPA. However, DFPS did consider different training times for normalcy, but decided a shorter training time frame was not adequate, and a longer time frame was excessive.

Ms. Subia has determined that the proposed amendments, new sections and repeal do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@DFPS.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-543, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

## SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

### DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

#### 40 TAC §749.863, §749.868

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and

Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.863. *What are the pre-service hourly training requirements for caregivers and employees?*

(a) Caregivers and certain employees must complete the following training hours before the noted timeframe:  
Figure: 40 TAC §749.863(a)

~~(b) Caregivers exclusively caring for children receiving treatment services for primary medical needs are exempt from pre-service emergency behavior intervention training requirements.~~

(b) [(e)] You must document the completion of each training requirement in the appropriate personnel record.

§749.868. *Must I provide pre-service training regarding normalcy to a child-placing agency administrator, treatment director, child placement staff, child placement management staff, or full-time professional service provider who was previously employed by a residential child-care operation?*

(a) A child-placing agency administrator, treatment director, child placement staff, child placement management staff, or full-time professional service provider is exempt from completing the pre-service training regarding normalcy if the person:

(1) Has been employed by a residential child-care operation during the past 12 months;

(2) Has received training during the past 12 months on normalcy; and

(3) Can document that the training has been received.

(b) You must document the exemption factors in the appropriate personnel record.

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

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Trevor Woodruff

General Counsel

Department of Family and Protective Services

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



## DIVISION 4. GENERAL PRE-SERVICE TRAINING

### 40 TAC §749.882

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.882. *What curriculum components must be included in the pre-service training regarding normalcy?*

The pre-service training regarding normalcy must include the following components:

(1) A discussion of the definitions of normalcy and the reasonable and prudent parent standard;

(2) The developmental stages of children, including a discussion of the cognitive, social, emotional, and physical development of children;

(3) Age appropriate activities for children, including unsupervised childhood activities;

(4) The benefits of childhood activities to a child's well-being, mental health, and social, emotional, and developmental growth;

(5) How to apply the reasonable and prudent parent standard to make decisions; and

(6) The child's and the caregiver's responsibilities when participating in childhood activities.

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

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## DIVISION 6. ANNUAL TRAINING

### 40 TAC §§749.931, 749.943, 749.944

The amendment and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new sections implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.931. *What are the annual training requirements for caregivers and employees?*

(a) Caregivers and employees must complete the following training hours:  
Figure: 40 TAC §749.931(a)

(b) (No change.)

§749.943. *What curriculum components must be included in the annual normalcy training?*

(a) The annual training regarding normalcy must include the curriculum components covered in the pre-service training regarding normalcy, see §749.882 of this title (relating to What curriculum components must be included in the pre-service training regarding normalcy?).

(b) Subsequent annual training regarding normalcy should further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented.

§749.944. *What curriculum components must be included in the annual training related to prevention, recognition, and reporting on child abuse and neglect?*

The training related to prevention, recognition, and reporting on child abuse and neglect must include the following components:

(1) The factors indicating a child is at risk for abuse or neglect;

(2) The warning signs indicating a child may be a victim of abuse or neglect;

(3) The procedures for reporting child abuse or neglect; and

(4) A list of community organizations that have training programs available to child-placing agency staff members, children, and parents.

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

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## SUBCHAPTER I. FOSTER CARE SERVICES: SERVICE PLANNING, DISCHARGE DIVISION 1. SERVICE PLANS

### 40 TAC §749.1311

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.1311. *Who must be involved in developing an initial service plan?*

(a) (No change.)

(b) The child, if verbal and developmentally able to participate [as appropriate], the parents, and the foster parents must be invited to the service planning meeting and should participate and provide input into the development of the service plan, including discussions regarding the child's participation in childhood activities.

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

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## SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS DIVISION 5. CAPACITY AND CHILD/CARE- GIVER RATIO

### 40 TAC §749.2563

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2563. *How do I determine child/caregiver ratio for a foster group home?*

(a) - (b) (No change.)

(c) [A child may be away from the foster home and caregivers in order to participate in an approved unsupervised activity as outlined in §749.2593(d) of this title (relating to What responsibilities does a caregiver have when supervising a child?)-] A child does not count in the child/caregiver ratio while participating in an approved unsupervised childhood activity.

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

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## DIVISION 6. SUPERVISION

### 40 TAC §749.2593

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

*§749.2593. What responsibilities does a caregiver have when supervising a child?*

(a) - (b) (No change.)

(c) Caregivers counted in the child/caregiver ratio must:

(1) Be aware of the children's habits, interests, and any special needs, including any special supervision needs;

(2) - (6) (No change.)

~~[(d) Children in care must participate in normal childhood activities, including unsupervised activities, as much as possible. Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions and consideration of normalcy for the child. Moreover, the child's service plan must specify the general parameters within which the foster parent is empowered to make decisions regarding childhood activities. The child may participate in unsupervised activities approved by the foster parent in accordance with subsection (e) of this section, and §749.2594 of this title (relating to Who should make the decision regarding a foster child's participation in childhood activities?).]~~

~~[(e) Foster parents should use a "reasonable and prudent parent" standard to decide whether a child may participate in an unsupervised activity.]~~

~~[(1) In making this decision a "reasonable and prudent parent" standard includes the assessment of the:]~~

~~[(A) Child's age;]~~

~~[(B) Child's abilities;]~~

~~[(C) Child's physical, mental, emotional, and social needs;]~~

~~[(D) Whether the activity is a normal childhood activity;]~~

~~[(E) Desires of the child;]~~

~~[(F) Surrounding circumstances, hazards, and risks of the activity;]~~

~~[(G) Other adults or children involved in the activity;]~~

~~[(H) Outside supervision of the activity, if available and appropriate; and]~~

~~[(I) Supervision instructions in the child's service plan.]~~

~~(d) [(2)] When a child participates in an unsupervised childhood activity, the caregiver must:~~

~~(1) [(A)] Know where the child is scheduled to be;~~

~~(2) [(B)] Give the child a specific time to return to the foster home or the caregiver's location;~~

~~(3) Provide, arrange, or confirm an appropriate method of transportation to and from the activity;~~

~~(4) [(C)] Give the child a way to contact the caregiver in an emergency; and~~

~~(5) [(D)] Be available to respond if the child contacts the caregiver and needs immediate assistance.~~

~~(e) [(F)] Caregivers that supervise a child receiving treatment services must maintain progress notes for the child, at a frequency determined by the service planning team. Caregivers must sign and date each progress note at the time the progress note is completed. Progress notes must be available for Licensing staff to review.~~

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

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### 40 TAC §749.2594

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2594. Who should make the decision regarding a foster child's participation in childhood activities?

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

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Trevor Woodruff

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## DIVISION 7. NORMALCY

### 40 TAC §§749.2601, 749.2603, 749.2605, 749.2607

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2601. What is "normalcy"?

Normalcy is the ability of a child in care to live as normal a life as possible, including:

(1) Engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard; and

(2) Having normal interaction and experiences within a foster family and participating in foster family activities.

§749.2603. Are children in care required to participate in childhood activities?

(a) Children in care must participate in childhood activities, including unsupervised childhood activities, as much as possible.

(b) Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions on how normalcy for the child can be achieved, and discussions, if applicable, regarding a child's refusal to participate in childhood activities. The child's service plan must specify whether there are any restrictions on the child's participation in these activities and whether the activities may extend into sleeping hours.

§749.2605. What is the "reasonable and prudent parent standard"?

(a) The reasonable and prudent parent standard is the standard of care that a parent of reasonable judgment, skill, and caution would use to maintain the health, safety, and best interest of the child and encourage the emotional and developmental growth of the child. This

standard applies to decisions about allowing a child to participate in normal childhood activities.

(b) When using the reasonable and prudent parent standard, a foster parent must take into consideration the following when deciding whether a child may participate in normal childhood activities:

(1) The child's age and level of maturity;

(2) The child's cognitive, social, emotional, and physical development level;

(3) The child's behavioral history and ability to participate in a proposed activity;

(4) The child's overall abilities;

(5) Whether the activity is a normal childhood activity;

(6) The child's desires;

(7) The surrounding circumstances, hazards, and risks of the activity;

(8) Outside supervision of the activity, if available and appropriate;

(9) The supervision instructions in the child's service plan;  
and

(10) The importance of providing the child with the most normal family-like living experience possible.

(c) There is a presumption that a reasonable and prudent parent would include the child in normal interactions and experiences within the foster family and allow the child to participate in foster family activities, to the same extent as a similarly situated child born to the family.

§749.2607. Who makes the decision regarding a foster child's participation in childhood activities?

(a) Except as otherwise provided in subsection (c) of this section, a foster parent makes decisions regarding a child's participation in childhood activities.

(b) When making decisions regarding a foster child's participation in childhood activities, the foster parent must follow the reasonable and prudent parent standard.

(c) The service plan may not require the prior approval of the parent before the foster parent may consent to a foster child's participation in childhood activities. However, if the parent provides notice in advance that the child is prohibited from participating in a specific activity, the foster parent must follow the parent's decision.

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

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Trevor Woodruff

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Department of Family and Protective Services

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## CHAPTER 750. MINIMUM STANDARDS FOR INDEPENDENT FOSTER HOMES

SUBCHAPTER M. CAPACITY AND CHILD/CAREGIVER RATIO; SUPERVISION; RESPITE CHILD-CARE SERVICES; AND FOSTER FAMILY RELATIONSHIPS

40 TAC §§750.1004, 750.1005, 750.1007

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §750.1004; and amendments to §750.1005 and §750.1007, in Chapter 750, concerning Minimum Standards for Independent Foster Homes (IFGH). The purpose of the new rule and amendments is to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy and for clarity and consistency.

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that were organized by Texas CASA (Court Appointed Special Advocates); On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

An independent foster group home (IFGH) is an operation (not related to a child-placing agency) that provides care for seven to 12 children up to the age of 18 years. As of the date of publication of these rules, there are only two IFGHs operating in Texas. Neither one contracts with the DFPS or provides services to children in the managing conservatorship of DFPS. Although the rules impacting IFGHs are located in Chapter 750, there are numerous standards in Chapter 749 of this title (relating to Minimum Standards for Child-Placing Agencies), that are adopted by reference in Chapter 750.

A summary of the changes related to normalcy that are being proposed in Chapter 749 and will be published in the same issue of the *Texas Register* include: (1) clarifying that children must participate in childhood activities, including unsupervised childhood activities (activities that are away from and not supervised by the foster home); (2) defining "normalcy" and the "reasonable and prudent parent standard"; (3) listing items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; (4) clarifying who will make decisions regarding whether a child may participate in a childhood activity; (5) clarifying that a child's participation in childhood activities must be discussed during service planning meetings; (6) requiring two hours of pre-service training regarding normalcy for foster parents; (7) requiring that two hours of normalcy training be included in the mandated annual training for all caregivers; and (8) providing a list of curriculum components that must be included in the general pre-service and annual normalcy training.

New §750.1004 clarifies that IFGHs must comply with the new Normalcy Division in Chapter 749.

Section §750.1005 is an amendment to update a cite.

Section §750.1007 is an amendment to update a cite.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the new section and amendments will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section and amendments.

Ms. Subia also has determined that for each year of the first five years the new section and amendments are in effect, the public benefit anticipated as a result of enforcing the new section and amendments will be that the safety of children in care and the quality of their care will be improved by integrating normalcy into the minimum standards. While some of these rule changes will impact IFGHs, Licensing has identified only four of the proposed rules that are being proposed in the same issue of the *Texas Register* that have the potential of a fiscal impact upon IFGHs: §749.863 of this title (relating to What are the pre-service hourly training requirements for caregivers and employees?), §749.882 of this title (relating to What curriculum components must be included in the pre-service training regarding normalcy?), §749.931 of this title (relating to What are the annual training requirements for caregivers and employees?), and §749.943 of this title (relating to What curriculum components must be included in the annual normalcy training?). These rules impact IFGHs because of §750.401(1) of this title (relating to What are the requirements for training and professional development?), which provides that the staff of an IFGH must be trained in accordance with the minimum standards for training in Subchapter F of Chapter 749 of this title (relating to Training and Professional Development), which includes §§749.863, 749.882, 749.931, and 749.943. However, even though there is a potential for a fiscal impact, because IFGHs do not have the staff noted in these rules and because IFGHs do not develop curriculum for training, CCL does not anticipate any fiscal impact. Therefore, there will be no effect on small or micro-businesses because the proposed changes do not impose new requirements on any businesses that require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed changes in the rules.

Ms. Subia has determined that the proposed new section and amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-543, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner

regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

*§750.1004. What are the requirements for normalcy?*

You must comply with Division 7, Subchapter M of Chapter 749 of this title (relating to Normalcy).

*§750.1005. What are the requirements for respite child-care services?*

(a) You must comply with Division 8 [7], Subchapter M of Chapter 749 of this title (relating to Respite Child-Care Services), with the exception of §749.2627 of this title (relating to What must occur before one of my foster homes accepts a child for respite services?).

(b) (No change.)

*§750.1007. What are the requirements for foster family relationships?*

You must comply with:

(1) Division 9 [8], Subchapter M of Chapter 749 of this title (relating to Agency-Foster Family Relationship), with the exception of §749.2655 of this title (relating to When must a foster home notify you of changes that affect the foster home?); and

(2) (No change.)

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 May 26, 2016.

TRD-201602699

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: July 10, 2016

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



## **TITLE 43. TRANSPORTATION**

### **PART 1. TEXAS DEPARTMENT OF TRANSPORTATION**

#### **CHAPTER 27. TOLL PROJECTS**

##### **SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS**

###### **43 TAC §§27.83 - 27.85**

The Texas Department of Transportation (department) proposes amendments to §27.83, Contracts to Operate Department Toll Projects, new §27.84, No-Cost Contracts for Services to Support the Operation of Department Toll Projects, and new §27.85, Service Charge for Payment Transactions, concerning Operation of Department Toll Projects.

###### **EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS**

Transportation Code, §228.052(a) authorizes the department to enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system. Transportation Code, §228.052(b) provides that a person that enters into an agreement with the department to provide services for a customer to pay an amount on an electronic toll collection customer account at a location other than a department office may collect from the customer a service charge in addition to the amount paid on the account. Transportation Code, §228.052(c) provides that the Texas Transportation Commission (commission) by rule shall set the maximum amount of the service charge, which may not exceed \$3 for a payment transaction.

The commission adopted §27.83 in 2006. The rule describes the process for soliciting proposals to operate a department toll project or system and provides for selection of the private entity whose proposal offers the apparent best value to the department. The department has determined that opportunities exist for private entities to provide certain services in support of toll operations at no cost to the department.

Amendments to §27.83, Contracts to Operate Department Toll Projects, clarify that the requirements of that section do not apply to no-cost contracts.

New §27.84, No-Cost Contracts for Services to Support the Operation of Department Toll Projects, prescribes the requirements for soliciting proposals for services to support the operation of a department toll project or system that will be provided by a private entity at no cost to the department. The new section identifies the types of services that may be solicited by the department, including: (1) establishing fleet account programs to manage the payment of tolls; (2) providing account maintenance services, including accepting payments, updating customer account information, and selling and registering tags; and (3) any other activities that the department considers necessary to enhance customer service and promote the efficient and effective operation of its toll projects and systems. The new section also addresses the solicitation process, evaluation and selection procedures, and execution of the agreement.

New §27.85, Service Charge for Payment Transactions, sets the maximum amount of the service charge that may be collected from a customer for a payment transaction conducted at a location other than a department office, and describes the circumstances under which the service charge may be assessed. The new section provides that a person may collect a service charge, not to exceed \$2.00, for accepting a payment due on an invoice or violation notice, accepting a payment to establish, or replenishing the minimum balance on a tag or accepting a payment for the sale of a tag. A separate service charge may be collected for each payment transaction. The service charge may not be assessed unless the underlying agreement with the department specifically authorizes such a charge.

The department contacted multiple retailers regarding bill payment services currently available to their customers. Service charges range between \$.75 and \$3.50, depending on the retailer and the type and amount of the payment. The department has determined that \$2.00 is a reasonable charge for an individual payment transaction.

###### **FISCAL NOTE**

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the amendments and new sections as proposed are in effect, there will be no fiscal impli-

cations for state or local governments as a result of enforcing or administering the amendments and new sections.

Mr. Richard Nelson, Director, Toll Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

#### PUBLIC BENEFIT AND COST

Mr. Nelson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be enhanced customer service and the more efficient and effective operation of department toll projects and systems. There are no anticipated economic costs for persons required to comply with the sections as proposed. Although customers may be assessed a service charge for a payment transaction conducted at a location other than a department office, customers are not required to use those services to manage electronic toll collection accounts. Other payment options are available that are not subject to the assessment of a service charge. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §27.83, and new §27.84 and §27.85 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Toll Project Rules." The deadline for receipt of comments is 5:00 p.m. on July 11, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.052, which requires the commission by rule to set the maximum amount that a person may collect as a service charge under that section.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §228.052.

§27.83. *Contracts to Operate Department Toll Projects.*

(a) Purpose. Transportation Code, §228.052 authorizes the department to enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system. This section prescribes requirements for soliciting proposals to operate a department toll project or system, except as provided by §27.84 of this subchapter.

(b) Procurement process. A contract that provides an operational concession to the private entity shall be procured using the two-step procurement process set out in subsections (c) - (i) of this section. Any other contract to operate a department toll project may be procured using a one-step process as prescribed by subsections (e) - (i) of this section.

(c) Request for qualifications. The department will set forth the basic criteria for professional experience, technical competence, and other information the department considers relevant or necessary in a request for qualifications, and will publish it, at a minimum, in the Texas Register and in one or more newspapers of general circulation in this state. The department may elect to furnish fundamental details or technical studies and reports relating to the toll project in the request for qualifications.

(d) Request for qualifications - evaluation. The department, after evaluating the submissions received in response to a request for qualifications, will identify those entities that will be considered qualified to submit detailed proposals for the toll project. In evaluating the submissions, the department will consider qualities that the department considers relevant to the project, which may include the private entity's financial condition, management stability, technical capability, experience, staffing, and organizational structure. The request for qualifications will include the criteria used to evaluate the submissions and the relative weight given to the criteria. The department will advise each entity providing a submission whether or not it is on the "short-list" of qualified entities.

(e) Request for proposals. The department will issue a request for proposals consisting of the submission of detailed documentation regarding the project. The request for proposals may require the submission of additional information relating to:

- (1) the proposer's qualifications and demonstrated technical competence;
- (2) the feasibility of operating the toll project as proposed;
- (3) the proposer's ability to meet schedules;
- (4) a detailed financial plan, if applicable, including costing methodology, cost proposals, and project financing approach; or
- (5) any other information the department considers relevant or necessary.

(f) Detailed proposal evaluation criteria. The proposals will be evaluated by the department based on those evaluation criteria the department deems appropriate for the toll project, which may include the reasonableness of any financial plan submitted by a proposer, the reasonableness of the project schedule, reasonableness of assumptions (including those related to legal liability, law enforcement, and operation and maintenance of the project), forecasts, financial exposure and benefit to the department, compatibility with other planned or existing transportation facilities, likelihood of obtaining necessary approvals and other support, cost and pricing, toll rates and projected usage, scheduling, environmental impact, manpower availability, use of technology, governmental liaison, and project coordination, with attention to efficiency, quality of finished product and such other criteria, including conformity with department policies, guidelines and standards, as may be deemed appropriate by the department to maximize the overall performance of the toll project and the resulting benefits to the state. Specific evaluation criteria and requests for pertinent information will be set forth in the request for proposals.

(g) Apparent best value proposal. Based on the evaluation and the evaluation criteria described under subsection (f) of this section and set forth in the request for proposals, the department will rank all proposals that are complete, responsive to the request for proposals, and in conformance with the requirements of this section, and may select the private entity whose proposal offers the apparent best value to the department.

(h) Selection of entity. The department will submit a recommendation to the commission regarding approval of the proposal deter-

mined to provide the apparent best value to the department. The commission may approve or disapprove the recommendation, and if approved, will award the agreement to the apparent best value proposer. Award may be subject to the successful completion of negotiations, any necessary federal action, execution by the executive director of the agreement, and satisfaction of other conditions that are identified in the request for proposals or by the commission. The proposers will be notified in writing of the department's rankings. The department shall also make the rankings available to the public.

(i) Negotiations with selected entity. If authorized by the commission, the department will attempt to negotiate an agreement with the apparent best value proposer to operate the project. If an agreement satisfactory to the department cannot be negotiated with that proposer, or if, in the course of negotiations, it appears that the proposal will not provide the department with the overall best value, the department will formally end negotiations with that proposer and, in its sole discretion, either:

- (1) reject all proposals;
- (2) modify the request for proposals and begin again the submission of proposals; or
- (3) proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that entity in accordance with this subsection.

§27.84. No-Cost Contracts for Services to Support the Operation of Department Toll Projects.

(a) Purpose. Transportation Code, §228.052 authorizes the department to enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system. This section prescribes the requirements for soliciting proposals for services to support the operation of a department toll project or system that will be provided by a private entity at no cost to the department.

(b) Types of services. The department may enter into agreements with private entities for services to support toll operations, including:

- (1) establishing fleet account programs to manage the payment of tolls;
- (2) providing account maintenance services, including accepting payments, updating customer account information, and selling and registering tags; and
- (3) any other activities that the department considers necessary to enhance customer service and promote the efficient and effective operation of its toll projects and systems.

(c) Solicitation process. The department will publish a notice regarding opportunities to provide the services described in subsection (b) of this section on the department's internet website. The notice will include information regarding the proposed scope of work, technical specifications, professional experience requirements, proposal submission requirements, and specific evaluation criteria that will be used dur-

ing the selection process. The notice will specify the duration of the solicitation, which may be an indefinite or extended period of time as determined by the department.

(d) Evaluation and selection procedures. The department will evaluate the proposals based on the criteria specified in the notice and identify those entities that are qualified to perform the specified services. The department will advise each entity, in writing, whether it has been selected. If a proposal is rejected, the department will provide to the entity the reason for the rejection.

(e) Agreement. Following selection, the entity must execute an agreement to provide the services, in a form specified by the department.

§27.85. Service Charge for Payment Transactions.

(a) Purpose. Transportation Code, §228.052 provides that a person that enters into an agreement with the department to provide services for a customer to pay an amount on an electronic toll collection customer account at a location other than a department office may collect from the customer a service charge in addition to the amount paid on the account. This section sets the maximum amount of the service charge and the circumstances under which the service charge may be assessed.

(b) Amount of service charge. A person may collect from the customer a service charge, not to exceed \$2.00, for:

- (1) accepting a payment due on an invoice or notice of non-payment;
- (2) accepting a payment to establish or replenish the minimum balance on a tag; or
- (3) accepting a payment for the sale of a tag.

(c) Service charge authorized for each transaction. A person may collect a separate service charge for each payment transaction conducted by a customer.

(d) Specific authorization required. A person may not assess the service charge described in subsection (b) of this section unless the agreement with the department specifically authorizes such a charge.

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

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Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 463-8630

