TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) adopts an amendment to §151.1001, concerning passing standards for educator certification examinations. The amendment is adopted without changes to the proposed text as published in the September 9, 2022 issue of the Texas Register (47 TexReg 5390) and will not be republished. The adopted amendment will specify the satisfactory scores for the Languages Other Than English: Spanish educator certification examination on or after January 9, 2023.

REASONED JUSTIFICATION: Texas Education Code (TEC), §21.048(a), requires the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and requires a satisfactory level of performance on each core subject covered by an examination.

Section 151.1001 specifies the passing standards for all pedagogical and content certification examinations as approved by the commissioner. The adopted amendment to Figure: 19 TAC §151.1001(b)(11) introduces passing standards for the Languages Other Than English: Spanish content certification examination beginning January 9, 2023. The passing standards were established by subject-matter expert stakeholder committee groups.

The average passing standard is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to balance the overall difficulty of the test yet maintain consistency in scoring.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 16, 2022, and ended October 17, 2022. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §21.048(a), which requires the commissioner of education to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on November 22, 2022.

TRD-202204672
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 12, 2022
Proposal publication date: September 9, 2022
For further information, please call: (512) 475-1497

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §744.123

The Texas Health and Human Services Commission (HHSC) adopts amendments to §744.123 in Title 26, Texas Administrative Code, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs.

Amendments to §744.123 are adopted without changes to the proposed text, as published in the August 19, 2022, issue of the Texas Register (47 TexReg 4939). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to implement sections of statute that were added or amended by SECTIONS 18 and 19 of House Bill (H.B.) 1540, 87th Texas Legislature, Regular Session, 2021.

H.B. 1540, SECTION 18, amended Texas Human Resources Code (HRC) §42.002 to add the new term "grounds" and its definition.

H.B. 1540, SECTION 19, made the following changes to HRC §42.042: (1) added subsection (e)(9), which requires HHSC
Child Care Regulation (CCR) to promulgate minimum standards that ensure a child’s health, safety, and welfare are adequately protected on the “grounds” of a child-care facility or registered family home; and (2) amended subsection (g) to allow CCR to recognize and treat differently the “grounds appurtenant to” child-care facilities, registered family homes, listed family homes, child-placing agencies, and foster homes when promulgating minimum standards for each operation type.

CCR conducted two work group meetings: one on November 15, 2021, which included 32 invited participants with day care experience, and one on November 18, 2021, which included 12 invited participants with residential care experience. The work groups met to discuss rule changes needed to implement the legislation and provided feedback on the drafted rules.

COMMENTS
The 31-day formal comment period ended September 19, 2022. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY
The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on November 28, 2022.
TRD-202204700
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 21, 2022
Proposal publication date: August 19, 2022
For further information, please call: (512) 438-3269

CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS
SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS
DIVISION 3. DEFINITIONS
26 TAC §746.123
The Texas Health and Human Services Commission (HHSC) adopts amendments to §746.123 in Title 26, Texas Administrative Code, Chapter 746, Minimum Standards for Child-Care Centers.
Amendments to §746.123 are adopted without changes to the proposed text, as published in the August 19, 2022, issue of the Texas Register (47 TexReg 4946). This rule will not be republished.

BACKGROUND AND JUSTIFICATION
The amendments are necessary to implement sections of statute that were added or amended by SECTIONS 18 and 19 of House Bill (H.B.) 1540, 87th Texas Legislature, Regular Session, 2021.

H.B. 1540, SECTION 18, amended Texas Human Resources Code (HRC) §42.002 to add the new term "grounds" and its definition.

H.B. 1540, SECTION 19, made the following changes to HRC §42.042: (1) added subsection (e)(9), which requires HHSC Child Care Regulation (CCR) to promulgate minimum standards that ensure a child’s health, safety, and welfare are adequately protected on the "grounds" of a child-care facility or registered family home; and (2) amended subsection (g) to allow CCR to recognize and treat differently the "grounds appurtenant to" child-care facilities, registered family homes, listed family homes, child-placing agencies, and foster homes when promulgating minimum standards for each operation type.

CCR conducted two work group meetings: one on November 15, 2021, which included 32 invited participants with day care experience, and one on November 18, 2021, which included 12 invited participants with residential care experience. The work groups met to discuss rule changes needed to implement the legislation and provided feedback on the drafted rules.

COMMENTS
The 31-day formal comment period ended September 19, 2022. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY
The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES
SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 3. DEFINITIONS

26 TAC §747.123

The Texas Health and Human Services Commission (HHSC) adopts amendments to §747.123 in Title 26, Texas Administrative Code, Chapter 747, Minimum Standards for Child-Care Homes.

Amendments to §747.123 are adopted without changes to the proposed text, as published in the August 19, 2022, issue of the Texas Register (47 TexReg 4946). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to implement sections of statute that were added or amended by SECTIONS 18 and 19 of House Bill (H.B.) 1540, 87th Texas Legislature, Regular Session, 2021.

H.B. 1540, SECTION 18, amended Texas Human Resources Code (HRC) §42.002 to add the new term "grounds" and its definition.

H.B. 1540, SECTION 19, made the following changes to HRC §42.042: (1) added subsection (e)(9), which requires HHSC Child Care Regulation (CCR) to promulgate minimum standards that ensure a child's health, safety, and welfare are adequately protected on the "grounds" of a child-care facility or registered family home; and (2) amended subsection (g) to allow CCR to recognize and treat differently the "grounds appurtenant to" child-care facilities, registered family homes, listed family homes, child-placing agencies, and foster homes when promulgating minimum standards for each operation type.

CCR conducted two work group meetings: one on November 15, 2021, which included 32 invited participants with day care experience, and one on November 18, 2021, which included 12 invited participants with residential care experience. The work groups met to discuss rule changes needed to implement the legislation and provided feedback on the drafted rules.

COMMENTS

The 31-day formal comment period ended September 19, 2022. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 28, 2022.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: August 19, 2022
For further information, please call: (512) 438-3269

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§748.43, 748.4553, 748.4659 and new §748.3319 and §748.3321 in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

Amendments to §748.4553 and §748.4659, and new §748.3319 and §748.3321 are adopted without changes to the proposed text, as published in the August 19, 2022, issue of the Texas Register (47 TexReg 4950). These rules will not be republished.

Amendments to §748.43 are adopted with changes to the proposed text as published in the August 19, 2022, issue of the Texas Register (47 TexReg 4950). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to implement sections of statute that were added or amended by SECTIONS 18, 19, and 20 of House Bill (H.B.) 1540, 87th Texas Legislature, Regular Session, 2021.

H.B. 1540, SECTION 18, amended Texas Human Resources Code (HRC) §42.002 to add the new term "grounds" and its definition.

H.B. 1540, SECTION 19, made the following changes to HRC §42.042: (1) added subsection (e)(9), which requires HHSC Child Care Regulation (CCR) to promulgate minimum standards that ensure a child's health, safety, and welfare are adequately protected on the "grounds" of a child-care facility or registered family home; (2) amended subsection (g) to allow CCR to recognize and treat differently the "grounds appurtenant to" child-care facilities, registered family homes, listed family homes, child-placing agencies, and foster homes when promulgating minimum standards for each operation type; and (3) amended subsection (g-2) to require CCR to consider precautions required for a general residential operation (GRO) to protect trafficking victims and the vulnerability of the victims on the "grounds" of a residential treatment center (RTC) when adopting minimum standards.

H.B. 1540, SECTION 20, added HRC §42.068, which requires (1) CCR to develop "no trespassing" notices that meet specific criteria and to provide them at no charge to each RTC; and (2) each RTC to post the "no trespassing" notices at specific locations on the grounds of the operation.

CCR conducted two work group meetings: one on November 15, 2021, which included 32 invited participants with day care experience, and one on November 18, 2021, which included 12 invited participants with residential care experience. The work groups met to discuss rule changes needed to implement the legislation and provided feedback on the drafted rules.

COMMENTS
The 31-day formal comment period ended September 19, 2022. During this period, HHSC received one comment regarding the proposed rules from one commenter: Disability Rights Texas. A summary of the comment relating to the rules and HHSC CCR’s response follows.

Comment: Regarding the proposed §748.4553, the commenter recommended that the rule be revised to include “whether or not firearms are allowed on the grounds of the GRO.” The commenter indicated that legislation related to carrying firearms was passed during the previous legislative session. The commenter stated that the legislation exempted some governmental entities from allowing firearms on the grounds, but the exemption did not include GROs. The commenter said the law currently allows the owner of the GRO the option to prohibit carrying firearms on the grounds of the GRO.

Response: HHSC disagrees with the commenter’s recommendation to revise the rule so that a GRO’s safety and security policies address whether firearms are allowed on the grounds of the GRO. There are already minimum standards that address handguns and firearms within the relevant statutory limitations. As this issue is unrelated to the purpose of this rule project, HHSC would need more time to obtain input from providers, stakeholders, and the public before making substantive changes to existing minimum standards.

HHSC made edits to §748.43 to put the definitions in alphabetical order.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

26 TAC §748.43

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

§748.43. 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 Commission on Higher Education, a component of the Middle States Association of Colleges and Schools;

   (C) The Commission on Institutions of Higher Education, a subdivision of the New England Association of Schools and Colleges;

   (D) 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 Accrediting Commission for Senior Colleges and Universities, a subdivision of the Western Association of Schools and Colleges;

   (G) The 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.

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, sociocultural background, and community setting.

4. Adult—A person 18 years old or older.

5. Caregiver—A person counted in the child/caregiver ratio, whose duties include the direct care, supervision, guidance, and protection of a child. This does not include a contract service provider who:

   (A) Provides a specific type of service to your operation for a limited number of hours per week or month;

   (B) Works with one particular child.

6. Certified lifeguard—A person who has been trained in rescue techniques, lifesaving, and water safety by a qualified instructor from a recognized organization that awards a certificate upon successful completion of the training. A certified lifeguard ensures the safety of persons by preventing and responding to water related emergencies.

7. Chemical restraint—A prohibited 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 a medication is not a chemical restraint under this chapter if the medication:

   (A) Is prescribed by a treating health-care professional;

   (B) Is administered solely for medical or dental reasons; and

   (C) Has a secondary effect of immobilizing or sedating a child.

8. Child in care—A child who is currently admitted as a resident of a general residential operation, regardless of whether the child is temporarily away from the operation, as in the case of a child at school or at work. Unless a child has been discharged from the operation, the child is considered a child in care.

9. 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.

10. Child/caregiver ratio—The maximum number of children for whom one caregiver can be responsible.

11. 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 chapter (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.

(12) Contract service provider--A person or entity that is contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(13) 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.

(14) Cottage or cottage home--A living arrangement for children who are not receiving treatment services in which:

(A) Each group of children has separate living quarters;
(B) 12 or fewer children are in each group;
(C) Primary caregivers live in the children's living quarters, 24 hours per day for at least four days a week or 15 days a month; and
(D) Other caregivers are used only to meet the child-to-caregiver ratio in an emergency or to supplement care provided by the primary caregivers.

(15) 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.

(16) Days--Calendar days, unless otherwise stated.

(17) 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.

(18) Department--The Texas Department of Family and Protective Services (DFPS).

(19) 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.

(20) Emergency behavior intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(21) 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 a medication is not an emergency medication under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;
(B) Is administered solely for a medical or dental reason (e.g., Benadryl for an allergic reaction or medication to control seizures); and
(C) Has a secondary effect of modifying a child's behavior.

(22) 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 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.

(23) Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. For the purposes of this chapter, employees include all operation staff and any owner who is present at the operation or transports any child in care.

(24) 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 determined in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

(25) Field trip--A group activity conducted away from the operation.

(26) Food service--The preparation or serving of meals or snacks.

(27) Full-time--At least 30 hours per week.

(28) Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(29) General Residential Operation--A residential child-care operation that provides child care for seven or more children or young adults. The care may include treatment services or programmatic services. These operations include formerly titled emergency shelters, operations providing basic child care, residential treatment centers, and halfway houses.

(30) Governing body--A group of persons or officers of the corporation or other type of business entity having ultimate authority and responsibility for the operation.

(31) Grounds--Includes any parcel of land where the operation is located and any building, other structure, body of water, play equipment, street, sidewalk, walkway, driveway, parking garage, or parking lot on the parcel. Also referred to as "premises" in this chapter.

(32) Group of children--Children assigned to a specific caregiver or specific caregivers. Generally, the group stays with the assigned caregivers throughout the day and may move to different areas throughout the operation, indoors and out. For example, children who are assigned to specific caregivers occupying a unit or cottage are considered a group.

(33) Health-care professional--A licensed physician, licensed advanced practice registered nurse (APRN), 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 physicians, nurses, or other medical personnel not licensed to practice in the United States or in the country in which the person practices.
(34) High-risk behavior--Behavior of a child that creates an immediate safety risk to self or others. Examples of high-risk behavior include suicide attempt, self-abuse, physical aggression causing bodily injury, chronic running away, substance abuse, fire-setting, and sexual aggression or perpetration.

(35) 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.

(36) Immediate danger--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 to self or others, or the probability of bodily harm resulting from a child running away. Immediate danger does not include:

(A) Harm that might occur over time or at a later time; or
(B) Verbal threats or verbal attacks.

(37) Infant--A child from birth through 17 months.

(38) Livestock--An animal raised for human consumption or an equine animal.

(39) Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(40) 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.

(41) 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.

(42) 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.

(43) Non-mobile--A child that is not able to move from place to place, even with assistance.

(44) Normalcy--See §748.701 of this chapter (relating to What is "normalcy").

(45) Operation--General residential operations, including residential treatment centers.

(46) Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns the operation.

(47) Parent--A person or entity that has legal responsibility for or legal custody of a child, including the managing conservator, or legal guardian of the child or a legally authorized representative of an entity with that status.

(48) Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(49) Permit holder--The owner of the operation that is granted the permit.

(50) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your operation voluntarily closes or is required to close through an enforcement action in Subchapter L of Chapter 745 (relating to Enforcement Actions).

(51) 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.

(52) 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.

(53) Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(54) Premises--See the term "grounds" and its definition in this section.

(55) PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(56) Prone restraint--A restraint in which the child is placed in a chest-down hold.

(57) 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 or an intellectual disability); and

(D) Written summary of the assessment.

(58) Re-evaluate--Re-assessing all factors required for the initial evaluation for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(59) 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?).

(60) Residential child-care operation--A licensed or certified operation that provides residential child care. Also referred to as a "residential child-care facility."
(61) Residential Treatment Center (RTC)--A general residential operation for seven or more children or young adults that exclusively provides treatment services for children with emotional disorders.

(62) Sanitize--The use of a product (usually a disinfecting solution) registered by the Environmental Protection Agency (EPA) that substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product’s labeling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labeling instructions for sanitizing (a bleach product, for example), you must conduct these steps in the following 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 item to air-dry.

(63) School-age child--A child who is five years old or older and is enrolled in or has completed kindergarten.

(64) Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(65) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other children and the placement of the child alone in an area from which the child is prevented from leaving. Examples of such an area include where the child is prevented from leaving by a physical barrier, force, or threat of force.

(66) Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(67) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(68) State or local fire authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors.

(69) 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.

(70) Substantial physical injury--Physical injury serious enough that a reasonable 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 serious includes the location, severity of the bodily harm, and age of the child. Substantial physical injury 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.

(71) Supine restraint--Placing a child in a chest up restraint hold.

(72) Supplements--Includes vitamins, herbs, and any supplement labeled dietary supplement.

(73) Swimming activities--Activities related to the use of swimming pools, wading/splashing pools, hot tubs, or other bodies of water.

(74) Toddler--A child from 18 months through 35 months.

(75) 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 Texas Penal Code §20A.02 or §20A.03.

(76) 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.

(77) 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.

(78) Universal precautions--An approach to infection control where all human blood and certain bodily fluids are treated as if known to be infectious for the human immunodeficiency virus (HIV), the hepatitis B virus (HBV), and other blood-borne pathogens.

(79) 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.

(80) Vaccine-preventable disease--A disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(81) Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the operation without monetary compensation; or

(B) Any type of services under the auspices of the operation without monetary compensation when the person has supervised access to a child in care.

(82) 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 adoption and found it to be a valid exercise of the agency's legal authority.

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The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE TRAFFICKING VICTIM SERVICES

DIVISION 2. POLICIES AND PROCEDURES

26 TAC §748.4553

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§749.43, 749.4053, and 749.4157 in Title 26, Texas Administrative Code, Chapter 749, Minimum Standards for Child-Placing Agencies.

Amendments to §§749.4053 and 749.4157 are adopted without changes to the proposed text, as published in the August 19, 2022, issue of the Texas Register (47 TexReg 4956). These rules will not be republished.

Amendments to §749.43 are adopted with changes to the proposed text as published in the August 19, 2022, issue of the Texas Register (47 TexReg 4956). This rule will be republished.

BACKGROUND AND JUSTIFICATION
The amendments are necessary to implement sections of statute that were added or amended by SECTIONS 18 and 19 of House Bill (H.B.) 1540, 87th Texas Legislature, Regular Session, 2021.

H.B. 1540, SECTION 18, amended Texas Human Resources Code (HRC) §42.002 to add the new term "grounds" and its definition.

H.B. 1540, SECTION 19, made the following changes to HRC §42.042: (1) added subsection (e)(9), which requires HHSC Child Care Regulation (CCR) to promulgate minimum standards that ensure a child's health, safety, and welfare are adequately protected on the "grounds" of a child-care facility or registered family home; and (2) amended subsection (g) to allow CCR to recognize and treat differently the "grounds appurtenant to" child-care facilities, registered family homes, listed family homes, child-placing agencies, and foster homes when promulgating minimum standards for each operation type.

CCR conducted two work group meetings: one on November 15, 2021, which included 32 invited participants with day care experience, and one on November 18, 2021, which included 12 invited participants with residential care experience. The work groups met to discuss rule changes needed to implement the legislation and provided feedback on the drafted rules.

COMMENTS

The 31-day formal comment period ended September 19, 2022. During this period, HHSC did not receive any comments regarding the proposed rule.

HHSC made edits to §749.43 to put the definitions in alphabetical order.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

26 TAC §749.43

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

§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 Commission on Higher Education, a component of the Middle States Association of Colleges and Schools;

   C. The Commission on Institutions of Higher Education, a subdivision of the New England Association of Schools and Colleges;

   D. 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 Accrediting Commission for Senior Colleges and Universities, a subdivision of the Western Association of Schools and Colleges; or

   G. The Accrediting Commission for Community and Junior Colleges, a subdivision of the Western Association of Schools and Colleges.

2. 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. 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. 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 parents;

   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. Adult--A person 18 years old or older.

6. Adverse action--See corrective or adverse action.

7. Babysitter--A person who temporarily cares for a child in foster care for no more than 12 consecutive hours. A babysitter is not required to meet the requirements for a caregiver unless the babysitter is a verified foster parent, an agency employee, a contract service provider, or a volunteer.

8. Babysitting--Care provided by a babysitter.

9. 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 who 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 a babysitter, an overnight care provider, or a respite child-care provider unless the person is:

      i. A verified foster parent;

      ii. An agency employee;

      iii. A contract service provider; or
(iv) A volunteer.
(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;
   (ii) Works with one particular child; or
   (iii) Is a nurse being reimbursed by Medicaid;
   (D) Does not include a person left alone momentarily with a child in care while the caregiver leaves the room; and
   (E) Does not include an adoptive parent.
(10) Certified fire inspector--Persons certified by the Texas Commission on Fire Protection to conduct fire inspections.
(11) Chemical restraint--A prohibited 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 a medication is not a chemical restraint under this chapter if the medication:
   (A) Is prescribed by a treating health-care professional;
   (B) Is administered solely for medical or dental reasons; and
   (C) Has a secondary effect of immobilizing or sedating a child.
(12) 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. Unless a child has been discharged from the child-placing agency, the child is considered a child in care.
(13) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.
(14) 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 chapter (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 un supervised childhood activities.
(15) Contract service provider--A person or entity that is contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.
(16) 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.
(17) 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).
(18) 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.
(19) Days--Calendar days, unless otherwise stated.
(20) 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.
(21) Department--The Department of Family and Protective Services (DFPS).
(22) 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.
(23) Emergency Behavior Intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.
(24) 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 a medication is not an emergency medication under this chapter if the medication:
   (A) Is prescribed by a treating health-care professional;
   (B) Is administered solely for a medical or dental reason (e.g. Benadryl for an allergic reaction or medication to control seizures); and
   (C) Has a secondary effect of modifying a child's behavior.
(25) 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.
(26) Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. For the purposes of this chapter, employees include all child-placing agency staff and any owner who is present at the operation or a foster home or transports any child in care.
(27) 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).
(28) Foster care--Care that is provided to a foster child by a foster family home.
(29) 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. Also referred to as a "foster home" in this chapter.

(30) Foster home screening--A written evaluation, prior to the verification of the foster home, of the:
(A) Prospective foster parent(s);
(B) Family of the prospective foster parent(s);
(C) All other part- or full-time household members; and
(D) Environment of the foster parent(s) and their family in relation to their ability to meet the child's needs.

(31) Foster parent--A person verified to provide child-care services in the foster home.

(32) Full-time--At least 30 hours per week.

(33) 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.

(34) Grounds--Includes any parcel of land where the foster home is located and any building, other structure, body of water, play equipment, street, sidewalk, walkway, driveway, parking garage, or parking lot on the parcel. Also referred to as "premises" in this chapter.

(35) Health-care professional--A licensed physician, licensed advanced practice registered nurse (APRN), 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 physicians, nurses, or other medical personnel not licensed to practice in the United States or in the country in which the person practices.

(36) 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, fire setting, and sexual aggression or perpetration.

(37) 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.

(38) 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 to self or others, or the probability of bodily harm resulting from a child running away. Immediate danger does not include:
(A) Harm that might occur over time or at a later time; or
(B) Verbal threats or verbal attacks.

(39) Infant--A child from birth through 17 months.

(40) 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.

(41) Mechanical restraint--A prohibited 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.

(42) 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.

(43) 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.

(44) Non-mobile--A child that is not able to move from place to place, even with assistance.

(45) Normalcy--See §749.2601 of this chapter (relating to What is "normalcy"?).

(46) Overnight care--Care provided by an overnight care provider.

(47) Overnight care provider--A person who temporarily cares for a child in foster care for more than 12 consecutive hours, but no more than 72 consecutive hours.

(48) Owner--The sole proprietor, partnership, or corporation or other type of business entity which owns a child-placing agency.

(49) Parent--A person or entity that has legal responsibility for or legal custody of a child, including the managing conservator, or legal guardian of the child or a legally authorized representative of an entity with that status.

(50) Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(51) Permit holder--The owner of the child-placing agency that is granted the permit.

(52) 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.

(53) 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.

(54) Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(55) Post-adoption 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.
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 parents and their family; and
(E) Adjustment of all individuals to the placement.

Pre-adoptive home screening--See adoptive home screening.

Premises--See the term "grounds" and its definition in this section.

PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

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.

Prone restraint--A restraint in which the child is placed in a chest-down hold.

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 or an intellectual disability); and
(D) Written summary of the assessment.

47 TexReg 8124  December 9, 2022  Texas Register
of minor bodily harm that will resolve healthily without professional medical attention.

(75) Supine restraint--Placing a child in a chest up restraint hold.
(76) Supplement--Includes vitamins, herbs, and any supplement labeled dietary supplement.
(77) Swimming activities--Activities related to the use of swimming pools, wading/splashing pools, hot tubs, or other bodies of water.
(78) Toddler--A child from 18 months through 35 months old.
(79) 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.
(80) 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.
(81) 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.
(82) 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 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.
(83) Volunteer--A person who provides:
(A) Child-care services, treatment services, or programmatic services under the auspices of the agency without monetary compensation; 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.
(84) 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 adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
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SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE TRAFFICKING VICTIM SERVICES

26 TAC §749.4053

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. TRAINING

26 TAC §749.4157

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.
The Texas Health and Human Services Commission (HHSC) adopts new §967.1, concerning Independent Mortality Review. Section 967.1 is adopted without changes to the proposed text as published in the August 5, 2022, issue of the Texas Register (47 TexReg 4661). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with Texas Government Code §531.851(d), which requires HHSC to identify the manner in which the state supported living centers (SSLCs) must report the death of an individual served to the independent mortality review organization contracted pursuant to §531.851(c) to conduct an independent mortality review. Additionally, this adoption places HHSC rules in Title 26 and the repeal of Texas Administrative Code (TAC) Title 40, Chapter 3, Subchapter E, concerning Death of an Individual, is being simultaneously adopted in this issue of the Texas Register.

COMMENTS

The 31-day comment period ended September 6, 2022.

During this period, HHSC received comments regarding the proposed rule from two commenters: Disability Rights Texas and Texas Council for Developmental Disabilities. A summary of comments relating to the rules and HHSC’s responses follows.

Comment: The rule should include the steps staff must take upon discovering a deceased individual; initiating and performing independent mortality reviews; and notifying family members or legally authorized representatives of the individual’s death.

Response: HHSC disagrees and declines to revise the new rule based on this comment as this is addressed within internal operating procedures. Specifically, the internal operating procedures require compliance with existing state laws and federal regulations regarding how to address such situations and HHSC procedures do not create additional requirements or obligations that affect private rights. Pursuant to Texas Government Code §2001.003(6), "a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures" is not included in the definition of a "rule."

Comment: The rule should include the circumstances and deadlines for which staff must report the death of an individual to the Department of Family and Protective Services and the Office of the Attorney General.

Response: HHSC disagrees and declines to revise the new rule based on this comment as this is addressed within internal operating procedures. Specifically, the internal operating procedures require compliance with existing state laws and federal regulations regarding how to address such situations and HHSC procedures do not create additional requirements or obligations that affect private rights. Pursuant to Texas Government Code §2001.003(6), "a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures" is not included in the definition of a "rule."

Comment: The rule should include the requirement, process, and deadlines of a clinical and administrative review of the death.

Response: HHSC disagrees and declines to revise the new rule based on this comment. These requirements will be provided in internal procedures, which allows the SSLCs to make necessary and timely updates to the standard operating procedures as best practices evolve. Pursuant to Texas Government Code §2001.003(6), "a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures" is not included in the definition of a "rule."

Comment: Removing these guidelines from TAC makes them less accessible to the public and makes it unclear as to whether the new internal guidelines are operating on a statewide basis, or if individual facilities will each have differing standards on this topic. HHSC should maintain the current rules by adopting them into 26 TAC rather than shifting them over to internal operating procedures.

Response: HHSC disagrees and declines to revise the new rule based on this comment. These requirements will be provided in internal procedures, which allows the SSLCs to make necessary and timely updates to the standard operating procedures as best practices evolve. Pursuant to Texas Government Code §2001.003(6), "a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures" is not included in the definition of a "rule."

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.851(d) which requires the adoption of rules regarding the manner in which the death of an individual served by an SSLC must be reported to the contracted organization to conducting independent mortality reviews.
The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

SUBCHAPTER E. DEATH OF AN INDIVIDUAL

40 TAC §§3.501 - 3.506, 3.508, 3.509

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts the repeal of §3.501, concerning Discovery, §3.502, concerning Reporting and Notification, §3.503, concerning Medical Certification of Death and Autopsies, §3.504, concerning Disposition, §3.505, concerning Clinical Death Review, §3.506, concerning Administrative Death Review, §3.508, concerning State Office Mortality Review, and §3.509, concerning Independent Mortality Review in Title 40, Part 1, Chapter 3, Subchapter E, concerning Death of an Individual.

Sections 3.501 - 3.506, 3.508, and 3.509 are adopted without changes to the proposed text as published in the August 5, 2022, issue of the Texas Register (47 TexReg 4666). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption is necessary to facilitate updates to internal operating procedures for which there are no statutory requirements for adoption in the Texas Administrative Code (TAC) by repealing the rules in Title 40, Chapter 3, Subchapter E, concerning Death of an Individual. While the state supported living centers (SSLCs) will continue to conduct both facility-level and state office-level reviews of the deaths of individuals served, the adoption of these procedures in the TAC impedes the SSLCs’ ability to make necessary and timely updates to the procedures. This proposal also complies with Texas Government Code §531.851(d), which requires HHSC to identify the manner in which the SSLCs must report the death of an individual served to the independent mortality review organization contracted pursuant to Section 531.851(c) to conduct an independent mortality review. This independent mortality review is in addition to the reviews conducted at the facility and state office levels. This adoption repeals HHSC rules in Title 40 and a new rule in 26 TAC 967, concerning State Supported Living Center Independent Mortality Review, is simultaneously adopted in this issue of the Texas Register.

COMMENTS

The 31-day comment period ended September 6, 2022.

During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.851(d) which requires the adoption of rules regarding the manner in which the death of an individual served by the SSLC must be reported to the contracted organization conducting independent mortality reviews.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on November 28, 2022.

TRD-202204693
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Effective date: December 18, 2022
Proposal publication date: August 5, 2022
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